JOINT APPENDIX

VOLUME VII

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 16,206, 16,255, 16,376

498

THE ASSOCIATION OF WESTERN RAILWAYS, TRAFFIC EXECUTIVE ASSOCIATION-EASTERN RAILROADS, EASTERN RAILROAD PRESIDENTS CONFERENCE, et al.,	
Appellants,	Nos. 16,206 and 16,376
v.	
RISS & COMPANY, INC.,	
Appellee.	
THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, et al.,	
Appellants,	No. 16,255
v.	
RISS & COMPANY, INC.,	
Appellee.	

Appeal from a Judgment of the
United States District Court for the District of Columbia

United States Court of Appeals
For the
District of Columbia
OCT 16 1961

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12,062 BY MR. WHEELER:

Q. Mr. Wright, you said the motor carriers had a right to protest. When you used that term at that point of your statement, you were referring to their right to file a complaint with the Commission?

A. Yes, they could file a formal complaint with the Commission.

Q. And that is the formal complaint that is referred to in the Commission's letter, C & O Exhibit 44?

A. That's correct. They have the privilege of filing a formal complaint.

MR. WHEELER: No further questions, Your Honor.

THE COURT: Mr. Wright, you may cross examine Mr. Wright at this time, then.

MR. WHEELER: Pardon me, Your Honor. I don't believe I offered Exhibit 43 in evidence, the tariff.

THE COURT: All right, it may be admitted.

(Thereupon Defendant No. 15 (C&O) Exhibit No. 43, supplement 13 to Freight Tariff E-2009-B was received in evidence.)

12,063 CROSS EXAMINATION

BY MR. WRIGHT:

Q. Mr. Wright, at the time this Suspension Board of the Interstate Commerce Commission acts on a request to suspend a rate, what do they have before them?

A. I didn't get the complete question.

Q. What is the record upon which the Commission acts when it decides whether or not to suspend a published tariff?

A. If I get your question, does the Commission publish anything when they suspend their rates, to explain why?

THE COURT: No, you had better speak a little louder.

MR. WRIGHT: Maybe I can get at it this way:

BY MR. WRIGHT:

Q. When the Commission considers -- when the Suspension Board, that is -- of the Commission, considers whether or not they are going to grant a request to suspend a published rate, or refusal, what does the Suspension Board have in front of it by way of a record?

A. It has any protest which may have been filed by motor carriers, and in this instance there were some protests filed by motor carriers.

Q. And what else? It has the protests of the motor carriers, and those are in written form; right?

12,064 A. They make -- motor carriers will make claims that the rate should be suspended for various reasons of law.

Q. Then it has the response of the carrier who filed the tariff, does it not?

A. The carrier, if there are protests -- the carrier has the right then to file an answer to that protest.

Q. Then before it acts, does it hold any kind of a public hearing at which either the carriers or anyone else who is interested in protesting the rate, has an opportunity to present testimony?

A. That's a pretty long question here. I'm not sure that I got all of that.

Q. Does the Suspension Board hold a hearing, a public hearing of any kind, before it acts on a request to suspend?

A. Public hearings are not held before the Suspension Board. That is done after a formal complaint has been made.

Q. So at the time the Board acts on the --

THE WITNESS: May I complete my answer?

THE COURT: Yes.

MR. WRIGHT: I'm sorry.

THE WITNESS: But the written statements may be filed by the motor carriers objecting to the tariff that has been filed.

12,065 BY MR. WRIGHT:

Q. So at the time it decides whether or not to suspend, it merely acts upon the written requests and responses that are in front of it, isn't that right, without any hearing?

A. I don't think I understand the question.

Q. It is perfectly clear, is it not, that at the time the Commission decides to suspend or not to suspend, its decision is made simply on the basis of the written requests and the response of the carrier who filed the rate, before there is any hearing of any kind at which testimony could be given? Isn't that right?

A. Yes, that's right.

Q. So that when you say that the Commission is bound to suspend if it finds the rate unlawful or improper in any way, it is only bound to do that if it can say that the rate is unlawful or improper or otherwise subject to suspension, simply on the face of the papers that are filed requesting the suspension? Isn't that correct?

A. It has before it the papers that have been filed, and on the basis of those papers, those protests, and answers to protests, they come to the conclusion that they should suspend or not suspend.

* * *

CROSS EXAMINATION OF MR. WALTER WRIGHT BY MR. WRIGHT

12,067 Q. It's true, isn't it, Mr. Wright, that when someone petitions for a suspension, that in his petition he sets out facts which he thinks entitle him to have the Commission suspend the rate?

A. The motor carrier makes certain statements as to why they feel a certain tariff should be suspended.

Q. Yes; and then whoever filed the tariff files a response in which ie frequently takes issue with the one who asked for the suspension, does he not?

A. Yes, that's right.

Q. And isn't it a fact that where you have a situation where the carrier asking for suspension makes an allegation of fact, and the carrier who has filed the rate denies the allegation, that the Commission cannot assume for the purpose of its suspension action, that what the protesting carrier says is true; can it?

A. That's all right. I will agree with that, yes.

Q. So that if there are fact issues joined in that fashion, which are material, then it cannot suspend, can it?

A. Would you mind repeating that question?

Q. I say, if it is true that on the papers before it at the time the suspension is requested, there are issues of fact raised by these pleadings it has in front of it which could not be resolved without a hearing, it can't suspend, can it?

12,068 A. You are saying that only some of the facts are before the Suspension Board, and not all of them?

Q. I am saying that where it appears on the face of the allegations of the protestant in his petition, and the allegations of the carrier, of what the carrier who files the rate says in his response, that issues of fact are made --

A. I don't understand the question.

Q. You don't visualize a proceeding in which you are -- you are unable to visualize a proceeding where the one seeking the suspension says that "I need the suspension on account of facts A, B and C?

He doesn't just say, "I want the rate suspended". He tells why, doesn't he?

A. The protestant will say why he is protesting, and he will cite certain facts.

Q. And the respondent, the carrier who filed the rate, may say that what he says isn't so; isn't that correct?

A. Yes. He answers it and puts in facts to support his.

Q. And if there is a dispute on the facts, it's true, is it not, that the Commission cannot suspend the rate until after those factual disputes of that kind are resolved at a hearing?

12,069 A. Well, it has those facts before it, and then it comes to its --

Let's see. After it gets the facts, it will either suspend or not suspend, on the basis of what is appearing before it.

Q. Well, let me try this once more, and then I will desist.

A. And then, afterwards, if anyone has the feeling that the record is not complete, they can file a formal complaint.

Q. Well, isn't it true that if the record before the Suspension Board, which consists merely of the claims of the parties, is such that there are facts in dispute, the Board certainly isn't going to suspend the rate, is it?

A. When someone protests, I would say, yes, there is a dispute. But the Commission, or the Board of Suspension here, in refusing to suspend, discounts the argument and facts that are placed with it.

Q. Well, they couldn't accept any of these facts that may be alleged that are disputed, as true, for the purpose of deciding whether or not to suspend or not suspend, could they?

A. On the basis of the information it has before it, it will come to the conclusion to suspend or not to suspend.

12,070 Q. And that information does not include any data that you gather in the course of a contested hearing?

A. It includes whatever has been placed before the Board of Suspension.

Q. Well, it's clear, is it not, that at the time the Board acts, it does not have before it a record which is made in the course of a contested proceeding, where evidence is heard?

A. It has a record of whatever protests are made, whatever answers are made, and on the basis of that the Commission -- or Board of Suspension -- comes to its decision to suspend, or not suspend.

Q. Before there is any hearing. Isn't that correct?

A. It is what?

Q. And it makes that decision before there is any hearing on the merits?

A. That's before there is any hearing, yes. The hearing will come after the person has made the formal complaint.

* * *

12,076 [I]n order to be sure that the witness had an opportunity, not only to
12,077 hear the question, but to see it, I had these questions typed out and I thought the best procedure would be if I simply handed him the question and then he could read it aloud, if he would, and then go at his own pace.

* * *

12,078 THE WITNESS: Question. Does the loss and damage figures of .50900, appearing in Column 4 on your Exhibit 30, represent loss and damage to the cargo or to other property, or to both?

The answer is: That figure represents loss and damage to the

cargo. That is, it is the amount that we pay the shippers, if there should be any loss or damage to the shipper.

BY MR. WRIGHT:

Q. Thank you. (Hands another piece of paper to witness.)

A. Question. Is that loss and damage figure of .50900 derived by averaging the loss and damage sustained in the transportation of ammunition and explosives with the loss and damage sustained in the transportation of eighty-odd other commodities?

12,079 The answer is: I am not sure about the figure of eighty-odd other commodities. It is the loss and damage of a group of commodities, grouped together by the Interstate Commerce Commission.

I might say that this figure of .50900 is a figure which has been calculated by the Interstate Commerce Commission.

Q. (Hands another piece of paper to witness.)

A. Question. Does the damage to property figure of .24745, appearing in Column 4 on your Exhibit 30, represent damage to the property of railroads or to the property of others, or both?

The figure represents -- Answer: The figure represents the property damage to railroad equipment and to property of others.

Q. (Hands a piece of paper to witness.)

A. Question. Is that damage to property figure of .24745 based upon the amount of the property damage actually caused as a result of the transportation by the railroads of ammunition and explosives?

The figure referred to is a 10-year average of property damage incurred because of explosion of ammunition and explosives.

Q. (Hands a piece of paper to the witness.)

A. Question. Do the figures shown in your footnote G to Exhibit 30, in the table headed "Property Loss Due to Accidents in Transportation of Explosives, 1947-1956 Inclusive," show the property losses actually sustained as a result of all such accidents?

12,080 MR. WRIGHT: Excuse me. I just wanted to call the jury's attention to the fact that that footnote is the last page of the exhibit that they have in front of them.

THE WITNESS: If you examine footnote G, you will see that it is headed "Total Property Loss." Thus it includes all property loss actually sustained as a result of the explosions.

The second part of this question is: If not, which accidents have been omitted?

I know of none that have been omitted.

BY MR. WRIGHT:

Q. (Hands a piece of paper to the witness.)

A. Question. Do those figures in that table show the property losses actually sustained as a result of the explosion of rail carloads of explosives at South Amboy, New Jersey in 1950?

The answer is no.

Q. (Hands a piece of paper to the witness.)

A. Question. Does either the loss and damage figure or the property loss figure shown on your Exhibit 30 include any amount for personal injuries or deaths resulting from accidents in transportation of explosives?

MR. WHEELER: May we have that question reread?

12,081 THE COURT: Read the question, please, Mr. Wright.

MR. WHEELER: Read the question again.

THE WITNESS: Read it. Does either the loss and damage figure or the property loss figure shown on your Exhibit 30 include any amount for personal injuries or deaths resulting from accidents in transportation of explosives?

The answer is: I don't recall of any deaths over the 10-year period as being listed.

I can -- I can recall the records as having only, I think, 7 people were injured in the period covered.

Of those 7 people who were injured, 5 were injured because of discharge of firearms concealed in packages.

Q. The answer, I gather, is "No."

A. I am taking my statements from the annual report of the Bureau of Explosives.

Q. (Hands a piece of paper to the witness.)

A. Does either the loss and damage figure or the property loss figure shown on your Exhibit 30 include any amount for the personal injuries or deaths resulting from the South Amboy explosion?

The answer is: No. And as this point has been brought up, I think that I should explain to the jury that the South Amboy explosion was ruled by the Bureau of Explosives to have been not caused in the transportation of explosives.

MR. WRIGHT: That's all I have.

12,082 THE COURT: That's all you have? All right. Now, you may step down.

MR. WHEELER: I have one.

THE COURT: Do you have some questions? All right.

REDIRECT EXAMINATION

BY MR. WHEELER:

Q. Mr. Wright, there was reference made earlier to what the Bureau of Suspension has before it when it determines whether to suspend a rate that has been protested or not to suspend such rate.

Will you please, now, state what the Bureau of Suspension has before it when it takes that action?

A. The Board of Suspension receives a copy of the tariff.

THE COURT: Tariff. T-a-r-i-f-f. Tariff.

THE WITNESS: It receives protests from people who do not care to see the rate go into effect.

It receives answers to those protests.

It has also the recommendations of the various bureaus of the Interstate Commerce Commission including the cost-finding section, --

* * *

REDIRECT EXAMINATION OF MR. WALTER WRIGHT BY MR. WHEELER

12,083 THE WITNESS: Placed before it.

BY MR. WHEELER:

Q. Does it have the studies similar to that shown in your Exhibit 31?

A. Oh, yes, all of the publications of the Interstate Commerce Commission, including the various contributions studies are before the Board of Suspension.

Q. From Exhibit 31, could a person experienced in railroad cost finding determine quickly whether or not the rate on ammunition and explosives that was put into effect in 1955 and 1956 for the Government and in 1957 for the Government and commercial shippers, was compensatory?

A. Yes. These publications have been available for a number of years and would indicate the relative profit that could be made under the proposed rate.

Q. Was the spread of profit large or small enough to take care of increased costs, in your opinion?

12,084 A. Yes.

Q. Could that have been determined readily without making the kind of cost study that you have prepared and presented to the Court and the jury?

A. Yes.

Q. Is that publication -- is the publication from which that study was taken available to traffic, freight traffic officers of railroads throughout the country?

A. It is very widely distributed.

* * *

DIRECT EXAMINATION OF MR. TALBOT BY MR. McGLOTHLIN

12,143 Q. Mr. Talbot, referring to the Pennsylvania railroad exhibit 2 --

MR. WRIGHT: That is No. 2 for identification, your Honor.

THE COURT: Yes, for identification.

MR. McGLOTHLIN: I am sorry -- for identification.

THE COURT: I am permitting this witness to read this statement that he supposedly made at the May, 1955 meeting, for the purpose of refreshing his recollection of certain things in that statement.

BY MR. McGLOTHLIN:

Q. Mr. Talbot, to make it entirely clear, who wrote this document?

A. I did.

12,144 Q. When did you write it?

A. At the May, 1955, TEA meeting.

Q. I notice down here at the foot the initials "R.W.T." underlined. Whose handwriting is that?

A. Mine.

Q. What was "R.W.T." for, what does it stand for?

A. Russell W. Talbot.

Q. I notice up in the right-hand margin the words "What basis?" have been stricken out and above that is written "Docket 28,300." Does that refresh your recollection as to any part of the presentation?

A. Very definitely.

Q. What?

A. When Colonel Flanagan first described the proposal, it was not clear to me whether he was referring to 55 per cent of the Docket 28,300 rate scales, or 55 per cent of some other rate scale. So, at some stage in the meeting that was clarified. So, my question was clarified, I had the direct information I wanted and I crossed out the question and wrote docket 28,300.

Q. Below that I notice there is the statement "Cont. Rates now lower." To what does that refer?

A. Colonel Flanagan recommended that where there were individual point-to-point commodity rates on government ammunition and explosives, that were actually lower than would result from his general proposal, that such individual point-to-point commodity rates be continued in effect.

12,145 Q. You mean there were already in effect rail rates lower than this proposal?

A. I did not know of any at the time. But his suggestion was that if there were, that they be continued in effect.

Q. I notice down below, two lines below that, the words "Avg., period, railroad 87,000 lbs. per car."

Does that refresh your recollection as to anything else?

A. That means that Colonel Flanagan stated that the average load of government ammunition and explosives in rail cars throughout the nation, based upon a study that the military people had made, was 87,000 pounds per car.

That information is also in this other document, TEA exhibit 3, which I had not yet read at the time these notes were made. This document was passed out at some time --

Q. Referring now to TEA 5001 being passed out, are you not?

A. Yes. TEA 5001 was passed out at some time during the meeting. I did not get the opportunity to read TEA 5001 until after the meeting.

12,146 Q. The next line has ditto marks under "Average" and says "Rail Haul - 890 miles."

Does that refresh your recollection as to any part of the presentation?

A. Yes. Colonel Flanagan stated that the average rail haul on government ammunition and explosives was 890 miles. This data is likewise included in TEA exhibit 5001.

Q. Do you recall whether that was a national average or what type of an average?

A. That was a national average.

* * *

12,147 Q. Referring to the upper part of your notes, Mr. Talbot, there is a line which says, "Rep. Department of Defense."

Does that refresh your recollection as to the status of General Lasher and Colonel Flanagan in appearing before you?

A. That is merely my shorthand notation for noting that General Lasher and Colonel Flanagan were appearing on behalf of the entire Department of Defense, and not just the Army.

Q. On this document, Mr. Talbot, your notes indicate Column 55-50,000 minimum. Do you see that?

A. Yes, sir.

Q. Now, that was different from what you had understood the proposal would be, was it not?

A. Yes, sir.

Q. In what way?

A. My original information, prior to this meeting, the meeting of May, 1955, was that the Army would suggest Column 55 at a minimum weight of 60,000 pounds.

Q. Go ahead.

12,148 A. At this meeting they actually suggested Column 55 at a minimum weight of 50,000 pounds.

Q. Subsequent to the presentation, did any railroads address questions to the representatives of the Department of Defense?

A. There were a number of question.

Q. Is that usual in connection with a shipper's presentation?

A. Yes, sir.

Q. In the course of the army presentation, or of the questions that followed, Mr. Talbot, did the Army promise the railroads -- did the Department of Defense promise the people there all the explosives traffic if they made an adjustment?

A. No, sir.

Q. Did they promise them any specified portion of the traffic?

A. No, sir.

Q. Did they promise them any percentage of the traffic?

A. No, sir.

Q. Mr. Talbot, what impression did you gain from the presentation would be the future of the railroads' ammunition and explosives traffic if they did not make a rate reduction?

12,149 A. It was quite clear to me that, if we did not make a general adjustment in the rates on government ammunition and explosives, that the rail participation in this traffic would rapidly diminish to the vanishing point. It would become practically nil. The railroads would become standby carriers.

Q. What do you mean by "standby" carriers?

A. By that I mean the government would only use rail service in unusual circumstances, such as where truck service was not available or there was a shortage of truck equipment.

In other words, the railroads would only get an occasional shipment.

* * *

12,152 Q. Now, in thinking about the Army's proposal, the Department of Defense proposal, Mr. Talbot, what did you regard as the most important part of the proposal?

A. The most important part of the proposal was the column 40 rating at the 80,000 pound minimum weight.

Q. Do you have any recollection of how you got that impression that that was the most important part of the meeting?

A. Well, both General Lasher and Colonel Flanagan, based upon the discussion and the questions that followed their direct presentation, so stated.

Q. Your notes indicate, Mr. Talbot, that the Army -- let us put it this way: That the word at the meeting was that the average loading of ammunition and explosives nationwide was 87,000 pounds.

Did you have any knowledge or belief as to what the average loading was, in the Eastern territory?

A. Yes, sir.

Q. What was that?

A. Eighty to eighty-three thousand pounds.

Q. Somewhat lower, then?

A. Yes, sir, significantly lower.

Q. On what basis -- what was the basis for your information of the average loading of the Eastern territory?

12,153 A. My knowledge of the traffic handled by the Pennsylvania Railroad, we maintain statistics in the usual course of my business, studies made by the Interstate Commerce Commission on individual commodities: My action study of waybills covering the movement of this traffic of my railroad.

Q. Mr. Talbot, subsequent to the May and June meetings of the TEA, in the summer of 1955, were there any movements of government ammunition and explosives within Eastern Territory?

A. Were there any movements? Yes, sir. There were some substantial movements.

Q. Have you had an exhibit prepared under your supervision relating to some of those movements?

A. Yes, sir.

MR. McGLOTHLIN: I would like to have marked as Pennsylvania Railroad Exhibit No. 3 for identification this document.

DEPUTY CLERK: No. 66 Defendant, the Pennsylvania Railroad's exhibit 3 for identification.

(A table headed "List of Rail Section 22 Quotations, Issued in July, August and September, 1955, tendering ammunition and explosives rates that reflected Class 40 of the Docket 28,300 Class Rates" was marked for identification Pennsylvania Exhibit No. 3.)

12,154 THE COURT: Have you shown that to counsel?

MR. McGLOTHLIN: He has a copy.

This is a table headed "List of Rail, Section 22 Quotations issued in July, August and September, 1955; and tendering ammunition and explosives rates that reflected Class 40 of the Docket 28,300 Class Rates."

BY MR. McGLOTHLIN:

Q. Was this prepared under your supervision, Mr. Talbot?

A. Yes, sir.

Q. Have you checked it?

A. Yes, sir.

Q. Is it correct?

A. Yes, sir.

MR. McGLOTHLIN: May I have Plaintiff's exhibit 218, please?

(A document was handed to Mr. McGlothlin.)

BY MR. McGLOTHLIN:

Q. Mr. Talbot, I show you a thick document which is Plaintiff's exhibit 218, which is a study of rates in the Eastern area. Quotations which were indicated on here which are indicated on Pennsylvania Exhibit No. 3, TEA for identification appear in Plaintiff's exhibit 218, do they?

A. Yes, sir.

THE COURT: What was the answer?

12,155 THE WITNESS: Yes, sir.

BY MR. McGLOTHLIN:

Q. There is also one that is indicated as PRR No. 50?

A. Yes, sir.

Q. This is not a TEA quotation?

A. That is correct.

MR. McGLOTHLIN: I may state, your Honor, we have in the courtroom a copy of PRR 50, if anyone wishes to check.

THE COURT: All right.

MR. McGLOTHLIN: I offer Pennsylvania Railroad Exhibit No. 3.

THE COURT: Is there any objection?

MR. WRIGHT: No objection, except again this is cumulative. All of these are already in evidence in the exhibit we put in. I would have thought it would be simpler to just have him testify to the one quotation that is already in.

THE COURT: Anyway, I will permit it.

MR. WRIGHT: The record gets larger and larger this way.

THE COURT: All right. It is admitted in evidence.

(Pennsylvania Exhibit 3 is received in evidence.)

12,156 BY MR. McGLOTHLIN:

Q. Mr. Talbot, was there another Section 22 quotation for a movement within Eastern Territory during July, August and September of 1955, which does not appear on the Pennsylvania Railroad No. 3?

A. Yes, there was.

Q. What was that? Do you recall?

A. A quotation issued by the Baltimore & Ohio Railroad on July 6 or 7th, 1955, applying from Charlestown-Watson, Indiana to Curtis Bay, Maryland, which also provided a Class 40 rate subject to a minimum weight of 80,000 pounds.

In other words, the level of the rate was identical with the level of the rates on all of the quotations listed on Pennsylvania Railroad Exhibit No. 3.

The significance of the B & O quotation is that it was the first such quotation issued during the summer of 1955.

Q. These are all for movements within Eastern Territory, is that correct?

A. Wholly within Eastern Territory.

Q. And you say that these rates were Class 40, first class, in each instance, is that correct?

A. In each instance the government requested, and we tendered, Class 40 of Docket 28,300 first class rates at minimum weight level of 80,000 pounds.

12,157 Q. To the best of your knowledge, Mr. Talbot, how many movements were there of government ammunition and explosives within Eastern Territory during July, August and September, at rates higher than Class 40, at 80,000 pounds?

A. There were no other.

Q. You know of no other?

A. No, sir.

Q. Do you know whether, in negotiating or obtaining these rates the army made any further presentation of supporting facts? I am referring to the rates on Pennsylvania Railroad Exhibit No. 3.

A. The army made no presentation of supporting facts. They merely said they have a movement, taking the first entry in this exhibit, from Atlas to Nixon, if you want to participate in the movement, you give us a column 40 rate, minimum weight of 80,000 pounds.

They asked only for the Column 40 rate at 80,000 pounds, and made no reference to any Class 55 rate at any other minimum weight.

Q. I did not hear the end of that.

(The reporter read the answer.)

BY MR. McGLOTHLIN:

Q. Mr. Talbot, I notice about halfway down the Pennsylvania Railroad Exhibit 3, there is an entry, "Edgewood, Maryland to Nixon, New Jersey, PRR No. 50, September 2, 1955, Rate 64.4, minimum weight 80,000 pounds."

12,158 That was an independent quotation by the PRR, was it not?

A. That is correct.

Q. Were you involved in that quotation in any way?

A. Yes, sir.

Q. Mr. Talbot, in your judgment, by the first of September, 1955, what was the actual effective rate of the railroads for transporting ammunition and explosives within Eastern Territory?

A. Column 40 at a minimum weight of 80,000 pounds because Eastern Territory was then criss-crossed on many important movements with Column 40 rates at minimum weight of 80,000 pounds.

* * *

12,181 Q. Did there come a time when you reached an opinion in your own mind as to what the rate should be on government ammunition and explosives?

A. Yes, sir.

Q. Will you tell us approximately the time you think you reached such a conclusion?

A. Shortly -- on or about or shortly after the date on the letter over Mr. Carpi's signature, to the Chairman, Chairman Hill, that bears PRR Exhibit number --

Q. P.R.R. No. 5, I believe. I have it here.

A. The answer to that question is on or about or shortly after September 7th.

Q. 1955?

A. Yes, sir.

Q. Now, what was your judgment that you reached about that time as to, in your judgment, the rate the Eastern Railroads should permit?

12,182 A. I concluded that we should establish an incentive basis of rates, respecting Class 45, at a basic minimum weight of 40,000 pounds. And an 80 per cent incentive on the weight in excess of 40,000 pounds, or a Class 36 rating on the weight in excess of 40,000 pounds.

Q. That is 45 per cent on 40,000 pounds, and 80 per cent of 45 or 36, is that correct?

A. Yes, sir.

Q. Now, tell me first what was the basis of your judgment to use an 80 per cent inventive factor, that is, multiplying the original rate by 80 per cent to get the figure for the excess?

A. On a number of other truck competitive adjustments, on other commodities which were made by the railroads, prior to September, 1955, we had used the 80 per cent formula.

Q. Can you give me any commodity as to which that one had been used?

A. Yes, sir.

Q. What is that?

A. Two or three years prior to 1955, we used this precise formula on a truck competitive adjustment involving cigars, cigarettes and smoking tobacco, the category known as "manufactured tobacco."

Q. That was an ordinary tariff rate, was it not?

A. This was a tariff rate on commercial movements of manufactured tobacco.

12,183 Q. What has been the experience of the railroads as to the effectiveness of the incentive factor, the 80 per cent incentive factor?

A. We had, in this adjustment it had been demonstrated that the 80 per cent incentive factor had accomplished its objective. That is, increased the average loading of box cars.

Q. In arriving at your formula which you had decided was probably best, what rate level were you aiming for in the area of 80 to 90 thousand?

A. On the ammunition and explosives?

Q. Yes.

A. Forty.

Q. Well, why were you aiming at that figure in that range?

A. I was convinced at this point, beyond a doubt, that we had to put in column 40 at the average weight load of 80 to 90 thousand pounds in order to establish a competitive basis of rail rates.

Q. Now, you spoke of a minimum loading in your thinking, or rather, in your judgment, of 40,000 pounds. Where was the 40,000 pounds derived from in your thinking?

A. It was derived from in my thinking because of what we had done on several other adjustments prior to 1955 on other commodities: Tariff adjustments involving commercial movements.

12,184 Q. That is, you had made other incentive ratio with a minimum loading of 40,000 pounds?

A. We had made other incentive rates on other commodities with minimum loadings of 40,000 pounds, 30,000 pounds, 20,000 pounds.

Q. What factor influences the judgment of a rate person such as yourself in determining what the minimum rate factor would be, whether it was going to be 20, 30 or 40?

A. Average loading by motor carrier.

Q. Now, you told us that you had the factor of 40,000 pounds minimum loading, and that you had the objective of a rate in the range of 40 per cent, and 80 to 90 thousand pounds loading, and that you had an 80 per cent incentive factor.

A. Yes, sir.

Q. I would like for you to come to the blackboard now, and demonstrate the mathematical computations by which, with those factors, you arrived at your judgment that column 45 on 40,000 pounds, plus 80 per cent of 45 on the excess was the rate you would recommend.

(The witness went to the Blackboard.)

MR. McGLOTHLIN: With Your Honor's permission, I will have Mr. Talbot do his computations on the blackboard where they can be erased, his transient ones, and his permanent --

12,185 THE COURT: Do you want to pull the big blackboard out?

MR. McGLOTHLIN: I think it is all set, your Honor.

THE COURT: All right, as long as the Jury can see it.

Can all of the attorneys see it?

MR. McGLOTHLIN: We will turn it around.

THE WITNESS: First, I would like to point out what the objective is: The objective: What did I want to do? I wanted to establish a Class-40 rating in the weight range of 80,000 to 90,000 pounds.

MR. McGLOTHLIN: Just a minute. Is that writing large enough to be read from the far end of the jury? We will have him write a little larger.

Will you write larger please?

THE WITNESS: Yes, sir.

In order to accomplish this objective, the first step: Assume a first class rate of $1.00 per hundred pounds.

THE COURT: Mr. Talbot, can you speak just a little louder, please?

12,186 THE WITNESS: The first step is to assume a First Class rate of $1.00 per cwt. The second step, then my objective, a Class 40 rate would represent a rate of 40 cents per 100 pounds.

In other words, a Class 40 rate is 40 per cent of first class: 40 per cent of $1.00 is 40 cents.

Then, No. 3: Then the freight charge on an 80,000 pound load would be 40 cents per 100 pounds times 80,000 pounds is equivalent to 800 hundredweight times 800 which is equal to $320 per car.

Then after having determined the freight charge of $320 per car at a Class 40 rate on an 80,000 pound load, we must determine the rating at basic minimum weight of 40,000 pounds. Now, that is No. 4.

That is using an incentive loading ratio of 80 per cent.

Now, the next step, No. 5: Assume a capital "R" represents the rating at 40,000 pounds which we wish to determine.

The next step, No. 6: Then the freight charge on the first 40,000 pounds in the car would be -- the rating which is finally determined, which we have represented by the letter "R" times 400 hundredweight, which is one hundredweight equivalent of 40,000 pounds, or 400 R.

12,187 THE COURT: Excuse me.

Mr. McGlothlin, unless you have some purpose in mind, do you suppose we would save any time if we took our recess and let the witness put up on the board there, let him continue what he is doing and then he can go through and explain it to the jury when we come back.

Would you rather have the jury listen to it as we go along?

MR. McGLOTHLIN: I can follow it better if I see it develop step by step. I want to understand it too. I would rather have it done that way.

THE COURT: All right, you may continue.

THE WITNESS: Then No. 7, then the freight charge on the second 40,000 pounds in the car would be the same as the first, which is 400 R subject to the 80 per cent incentive loading factor, or 400 R times 80 per cent.

BY MR. McGLOTHLIN:

Q. Let me ask you one question: The 40,000 pounds in your sixth item and the 40,000 pounds in your 7th item together add up to the 80,000 pound load of the car, is that it?

A. That is correct.

Q. All right, thank you.

12,188 A. Then No. 8: The total freight charges on the carload of 80,000 pounds would be this, plus this. This is the first 40, and this is the second 40--or 400 R plus 400 R times 80 per cent.

Now, we have already determined, under Item 3 above, that the total freight charges of 80,000 pounds in a car must be $320 per car to satisfy the conditions, our objective. So this total freight charge expressed this way must equal $320. But we have to express the dollars, not express the $320 in dollars but express it in cents.

$320 is the same as 32,000 cents.

Q. Are you going to work the formula on the scratch board?

A. Yes. Now, this is a basic equation which, when it is solved, will give the answer we are looking for, which is "What is 'R'?"

Going one step further 400 R plus 400 R times 80 per cent is the same as 400 R times 8/10ths, which is multiplying 400 by 8 and dividing by 10. That equals 32,000 cents.

400 R plus 320 R is 720 R. Now, we find what "R" is merely by dividing 32,000 by 720. If 720 R equals 32,000, one R will equal 32,000 divided by 720.

So, to determine what "R" is, we merely make a long division. 12,189 Now, that is 32,000 (drawing on the other blackboard) divided by 720. 720 goes into 3200 four times. Four zeros are a zero, four two's, 8, four 7's 28. Subtracting you get 320. Bring a 0 down and then we get 4 again up here. Four zeroes are a zero, four two's are eight, four sevens, 28. Subtracting again, we get 320.

Bringing a zero down, 720 again goes into 3200 4 times. 4 times 720 is again 2880. Subtracting, we get 320. Bring a zero down and we get 4 again. It is a repeating number.

So, the answer, the two decimal points is 44.44. That is the mathematical answer. That is the rating we are looking for to produce the conditions outlined in the top of the chart. A precise mathematical rating of 44.44 will produce a column 40 rating, the very top line, in the weight range of 80 to 90 thousand pounds.

Now, this is the mathematical answer. But from a rate standpoint there is no rate, published in tariffs and filed with the Interstate Commerce Commission to which we must refer, of 44.44 per cent. The ratings are published in whole numbers: 45 per cent.

So, in selecting the rating that we must use for practical purposes, we selected 45 per cent, which is near to this mathematically.

In addition to that, it is a commonly used rating.

12,190 This was the rating that we selected. So, getting a mathematical answer of 44.44 per cent, then from a practical standpoint, I selected 45 per cent.

BY MR. McGLOTHLIN:

Q. Mr. Talbot, you told us the factors you used and the mathematics by which you worked out the rating of 44.44, which rounded off to column 45 at 40,000 pounds.

A. Yes, sir.

Q. With the 80 per cent factor above that. Now, in your judgment, was the Column 45, at 40,000 pounds, what you called a competitive rate?

A. Would you repeat the question, please?

Q. I will rephrase it.

What was your judgment, Mr. Talbot, at that time, as to whether a Column 45 rate would be effective to obtain government ammunition and explosives traffic in loads of 40,000 pounds by railroad?

A. Well, this wasn't the problem that I was interested in.

Q. Well, give me your judgment, Mr. Talbot. That is what the question was.

(The pending question was read by the reporter).

THE WITNESS: If I at that time was determining a rail rating to be competitive on 40,000 pound shipments, I would not have selected Column 45.

MR. McGLOTHLIN: Would you read the question again:

(Question read).

12,191 THE WITNESS: I said I wouldn't have selected it. The obvious reason is it would not have been effective.

Q. In your judgment it would not have been effective?

A. No, sir.

Q. You started to say, Mr. Talbot, I think, something about this was not the problem to which you were addressing yourself. Do you want to complete that answer?

A. Surely. The problem to which I was addressing myself was the movement of government ammunition and explosives. Government ammunition and explosives moves in large quantities, substantial orders, conventional movement involving 500,000 pounds. This is a small movement of government ammunition and explosives. This would take five or six rail cars, or, if it moved by motor vehicle, maybe 12 or 14 motor vehicles, or thereabouts.

The Government is interested in moving large quantities of ammunition. This is the way the vast preponderance of this traffic moves.

I was interested in making a rail rate for movements of large volumes of ammunition in the loading range that it would move in rail cars.

12,192 Q. That is, 80,000 pounds and above?

A. 80,000 to 90,000 pounds. I hoped to get it as high as I could, to 120, if possible.

* * *

12,209 BY MR. McGLOTHLIN:

Q. Mr. Talbot, in September, 1955, what was the extent of your knowledge of the company called "Riss & Company?"

A. At that time, Riss & Company was the name of a trucking company to me, just as there were hundreds of other names.

Q. In your judgment as a rate man, did you anticipate that the formula which you recommended to Mr. Carpi would exclude truckers from the transportation of the Government ammunition and explosives?

A. Most certainly it would not.

Q. Why do you say that?

A. Because of my experience with a multitude of other adjustments in many other commodities of this same general character.

Q. Mr. Talbot, you are aware, as you have told us, that the proposal of the Department of Defense was for a Column 40 rate at 80,000 pounds, and a Column 55 rate at 50,000 pounds, and you have told us that from your judgment a preferable rate, and the one you recommended, is Column 45 at 40,000 with 80 per cent incentive factor.

Now, take first, if you will, the upper end of the scale, that is, 80,000 pounds onward, and give me the basis for your judgment that the rate that you recommended to Mr. Carpi was a better rate than the one that the Defense Department had requested?

12,210 A. The average load of Government ammunition and explosives throughout the country was 87,000 pounds.

The average load within Eastern Territory, the average load on my railroad, was less, somewhere in the neighborhood of 80,000 to 83,000 pounds.

I wanted to get the average load on my railroad and the average load on the Eastern railroads at least up to the national average of 87,000 pounds.

Beyond that, if possible, it was important that we get the average load throughout the country and within the East as much above 87,000 pounds as possible.

The Government proposal of Column 40 at the flat minimum weight of 80,000 pounds would have been of no value whatsoever in this direction.

Q. It did create incentive up as high, to below 80,000 pounds, didn't it?

A. Yes, it did.

Q. But it didn't have any incentive value beyond that?

A. The Government proposal for Column 40 rating at 80,000 pounds provided not one iota of incentive to load one additional pound in the car beyond 80,000. There was no built-in incentive, no inducement to the Government to load any more traffic in a car than 80,000.

12,211 My sights were set on 87,000 and 90,000. I wanted a built-in formula that would get and induce the shipper to load his freight for rail movement at least 87,000 and as much higher than that as possible.

Q. Did your formula provide such an incentive beyond 80,000?

A. Very definitely.

Q. Now, take the lower end of the range, Mr. Talbot:

The Army's proposal was for a Column 55 at 50,000 pounds, and your recommendation was Column 45 at 40,000 pounds?

A. Yes, sir.

Q. What was the reason for differing in the lower range?

A. Well, having adopted my formula, Column 45 at 40, with the 80 per cent incentive on the weight in excess of 40, obviously you can't have a Column 55 at 50,000 pounds. They would conflict. The two things are just not compatible. You have to discard one or the other.

So, there are a number of other reasons?

12,212 One of the other significant reasons is that I was not addressing myself to 40,000 pound shipments. I was attempting to establish a competitive level of rail rates on shipments in the weight range of 80,000 to 90,000 pounds. I completely disregarded as having no practical significance the problem of

establishing a competitive level of rail rates at lower weights, 40,000 or 50,000 pounds. To me this had no practical significance on this kind of traffic. It was not important. I discarded my thinking, and I just put it aside.

What I did was to establish a competitive level in a weight range of 80,000 to 90,000 pounds, and beyond that I wanted the incentive basis of rates that would increase the average load in the East to 87,000, 97,000 or possibly 100,000 pounds. That was why I established my formula.

Q. Mr. Talbot, you prepared a study which compares the rate sought by the Government with those you recommended?

A. Yes, sir.

MR. McGLOTHLIN: I ask to have marked for identification as the next Pennsylvania Railroad exhibit a tabulation entitled "Comparison of ammunition and explosive rates requested by the Government from Eastern rail carriers on May 19th, 1955, with rates tendered on October 17th, 1955."

12,213 THE CLERK: No. 66, Defendant the Pennsylvania Railroad's Exhibit No. 9 for identification.

(Thereupon, tabulation "Comparison of Ammunition and Explosives rates requested by Government from Eastern Rail Carriers on May 19, 1955 with rates tendered on October 17, 1955, was marked Defendant No. 66 (PRR) Exhibit No. 9 for identification.)

BY MR. McGLOTHLIN:

Q. I hand you Pennsylvania Railroad Exhibit 9 for identification and ask you whether that is the tabulation to which you refer?

A. Yes, sir.

Q. Did you have it prepared?

A. It was prepared under my supervision and direction.

Q. You checked it?

A. I have.

Q. Is it right?

A. It is.

MR. McGLOTHLIN: I offer it in evidence.

THE COURT: Any objection?

MR. WRIGHT: No objection.

THE COURT: It may be admitted.

(Thereupon, Comparison of rates requested by Government and tendered, tabulation, marked Defendant 66 (PRR) Exhibit 9 was received in evidence.)

12,214 (Copies of Exhibit No. 9, Pennsylvania Railroad, were passed to the jurors:)

BY MR. McGLOTHLIN:

Q. Mr. Talbot, this document is constructed in 200-mile blocks; is that correct?

A. Yes, sir.

Q. Turn first, if you will, to the fourth column, which is entitled, "Weight, where 80,000 lb. rates requested by Government supersede 50,000 lb. Rates requested by Government."

Then there is a series of figures in there which are mostly in 58,000 pound range, although below 400 miles it is just below the 58,000 pound range.

What do those figures represent?

A. That column of figures, which is approximately 58,000 pounds per car, indicates the load per car at which the Column 40 rate at 80,000 pounds requested by the Government produces lower freight charges per car than the Class 55 rate at 50,000 pounds requested by the Government.

In other words, where the load is approximately 58,000 pounds or above, the Column 55 rating would never come into play.

The Column 55 rating comes into play only on loads up to 58,000 pounds per car.

On loads in excess of 58,000 pounds per car, the Class 55 rating would be a paper rating.

12,215 Q. Let me see if I can get it through my head:

Now, let's go back and assume the $1.00 rate in which the rate for 80,000 pounds would be $320.00 per car. Remember that example?

Now, does this mean that at these weights opposite the respective mileages, the rate computed at Class 55 on 50,000 pounds would go over $320.00.

A. That's correct.

Q. At this point?

A. That's correct.

Q. So that it would be cheaper for the Government to use the 80,000 pound rate on any car that was heavier; is that what it means?

A. On any car that contained approximately 58,000 pounds or more the Government would never use the Class 55 rating because the Class 40 rating at the minimum weight of 30,000 pounds would produce lower freight charges on that particular car.

Q. Now, take the second column; how was it prepared -- the rate sought by the Government?

A. For 50,000 pounds?

Q. Yes.

A. Class 55, et cetera?

Q. Yes.

12,216 A. Well, that is merely --

Q. To make it specific, how did you get to the 94 cents that is opposite the 200 miles there?

We looked at a tariff filed with the Interstate Commerce Commission and looked up the Class 55 rate at 200 miles.

Q. And it was 94 cents; is that it?

A. Yes, sir.

Q. Now, the next column shows 69 cents for 200 miles. How was that computed?

Determined from the same tariff in the same way.

Q. Except this time you used Class 40; is that it?

A. That's correct.

Q. And now the last column which shows 70 cents; how was that done?

A. That is calculated.

Q. Calculated from what?

A. Well, at 200 miles we first to to this tariff that I mentioned filed with the Interstate Commerce Commission, and determine what the Class 40 rate is, and determine the freight charges at the Class 40 rate on the base minimum weight of 40,000 pounds.

Then we determine what the 80 per cent rate is on the Class 36 rate and compute the freight charges on the second 40,000 pounds, so as to get the total of the 80,000 pounds.

12,217 In that manner we derive the total freight charges on 80,000 pounds. Then dividing those total freight charges by 800 hundredweight we come up with a rate of 70 cents.

Q. This exhibit seems to indicate that at 80,000 pounds load that at each of the mileages of 200 to 1,800 your formula produced a somewhat higher rate than the Government had requested; is that correct?

A. That's correct. At 200 miles the rate was one cent higher which is equivalent to $8.00 per car.

At 1,800 miles, for example, the rate was 3 cents higher, which is equivalent to $24.00 per car.

* * *

12,270 Q. Mr. Talbot, do you know whether, in response to a rate reduction section as that shown in Atlas-to-Fort Estill, the railroads took any rate action in response?

A. As to that specific movement I do not recall. But as to a number of the movements on this particular exhibit the railroads did take subsequent rate action.

12,271 Q. Of what type?

A. Reduced their rates to establish rates that would be competitive with the new motor carrier rates.

* * *

DIRECT EXAMINATION OF MR. MAGUIRE BY MR. FLYNN

12,470 Q. Would you please tell us briefly what the Western Traffic Association is?

A. The Western Traffic Association is composed primarily of, in round figures, about 110 Western Railroads, who are members of what are known as component organizations, all of which are operating under articles of organization and procedure of Western Traffic Association, which was approved --which is a contract approved by the ICC under Section 5-A of the Interstate Commerce Act.

12,471 Q. Mr. Maguire, I show you what the clerk has previously marked as AWR exhibits 239 which is a booklet entitled "Articles of Organization and Procedure, Western Traffic Association" and AWR No. 240 which is entitled "Amendments to Articles of Organization and Procedure, Western Traffic Association," and ask if those are the articles of agreement to which you referred?

A. Yes, sir.

MR. FLYNN: I offer those exhibits, your Honor.

THE COURT: Any objection?

They may be admitted.

(AWR Exhibit 239, Booklet entitled, "Articles of Organization and Procedure, Western Traffic Association," and AWR Exhibit 240, entitled "Amendments to Articles of Organization and Procedure, Western Traffic Association" were received in evidence.)

BY MR. FLYNN:

Q. Is the Western Traffic Association what is commonly known as a 5-A organization?

A. Yes, it is.

Q. The articles which you have before you were they submitted to the ICC for its approval?

A. Yes, they were submitted to the ICC and were the first contract approved by the ICC under Section 5-A of the Interstate Commerce Act.

The order of approval was effective December 15, 1949.

12,472 Q. Mr. Maguire, do those two exhibits in front of you reflect the articles of the Western Traffic Association as they existed during the years 1955 and 1956?

A. Yes, they do.

Q. Proceed.

A. I think there was just one small change which was entirely a matter of form rather than anything else. That is not covered here. It was merely a matter of form rather than substance.

Q. Mr. Maguire, is the Western Traffic Association a part of the Association of Western Railways?

A. Has no connection whatsoever.

Q. Is the Association of Western Railways part of the Western Traffic Association?

A. No connection whatsoever.

Q. Does the Association of Western Railways exercise any control over the Western Traffic Association?

A. They do not.

Q. Does the Executive Committee of the Association of Western Railways exercise any control over the actions of the Western Traffic Association?

A. None, whatsoever.

Q. Does the Western Traffic Association utilize any of the facilities of the Association of Western Railways?

12,473 A. Yes, they do. Pursuant to the authority which was granted them by their 5-A Agreement, they made an arrangement with the accounting department of the Association of Western Railways whereby, instead of the Western Traffic Association, or the agency, setting up their own accounting departments in Chicago, they hire the Accounting Department of the Association of Western

Railways to handle their accounting work, and also they hire the mailing department and the mimeographing rooms or other devices for the reproduction of copies or all papers upon the same basis. They pay us for everything they get.

Now, that applies only, of course, I must say, to the Executive Committee, and to certain of the component organizations of Western Traffic Association which have their headquarters in Chicago.

Q. Does the Accounting Department of the AWR determine how the funds of the Chicago-based organizations shall be expended?

A. They have nothing whatever to say about it.

Q. Does it have any authority over the budget of these organizations?

A. No, they do not.

Q. Mr. Maguire, has a chart been prepared to show the organization of the Western Traffic Association as of 1954?

12,474 A. It has been.

Q. I direct your attention to the chart on the easel which has been marked by the Clerk as AWR exhibit 241, headed "Western Traffic Association - 1954" and ask you whether you previously examined this chart?

A. Yes, I have.

Q. Does it correctly reflect the organizations of the Western Traffic Association as of that time?

A. Yes, it does, except that, as to some of the organizations, the names of the members are not shown. But they are available in the 5-A agreement.

Q. Does the organization of the Western Traffic Association remain substantially the same through 1955 and 1956?

A. Yes, sir.

MR. FLYNN: I offer the chart, your Honor.

THE COURT: Any objection?

MR. WRIGHT: No objection.

THE COURT: It may be admitted.

(Defendant AWR Exhibit No. 241, headed "Western Traffic Association-1954" was received in evidence.)

BY MR. FLYNN:

Q. Please name the Western Traffic Association Organization shown on the chart and state where the headquarters, the major organizations are located?

12,475 A. Yes, sir. I will look at this copy, if I may. It is easier for me to read.

Q. That is a small copy?

A. It is a small copy the same as the big chart.

The Executive Committee of the Western Traffic Association has its headquarters in Chicago, as does the Transcontinental Freight Bureau, and the Western Trunkline Committee. I am speaking now of the Freight-rate-making organizations, or mixed.

The Southwestern Freight Bureau which is another one of the major component organizations has its headquarters in St. Louis, Missouri.

The Texas-Louisiana Freight Bureau has its headquarters in Dallas, Texas.

The Pacific South-Coast Freight Bureau has its headquarters in San Francisco.

The North Pacific Coast Rate Bureau has its headquarters in Seattle, Washington.

Do you want me to name the passenger associations?

Q. I think you may as well.

A. All right.

The Transcontinental Passenger Association and the Western Passenger Association have their headquarters in Chicago.

12,476 The Southwestern Passenger Association has its headquarters in St. Louis.

I have not named some of the subcommittees of the main jurisdictions, the Rate Jurisdictions.

Q. I think that is sufficient. Mr. Maguire, you are chairman of the Executive Committee which is the first position shown here.

A. Yes, sir.

Q. Does each of these other major organizations have a Chairman?

A. Yes, each one of them does.

Q. I also note, Mr. Maguire, on the chart that some of the names of the railroads, where membership is shown, are indented. Can you tell me what the significance of that is.

A. That means that the railroads which are indented are subsidiaries or under common management or control with the first immediately preceding railroad.

Q. What does that mean so far as the operation is concerned?

A. It means so far as the operation of the particular Bureau or Rate-making organization is concerned, that that group of railroads -- I will just take one and illustrate here. Take, for example, in Western Trunkline Committee, in the right-hand corner. You have the Union Pacific, and then underneath it the Saratoga and Encampment Valley.

12,477 Well, it means that those two railroads together have only one vote when it comes to any deliberations or proceedings of that committee.

The same applies as to these others. Some of them have three or four subsidiaries, or railroads under common management and control.

Q. Does the Western Traffic Association maintain a statistical bureau?

A. It does.

Q. Where would that come on this chart?

A. Well, that is a part or a sub-department of the Executive Committee.

Q. And is the correct title of that the Western Statistical Bureau?

A. No, it is a statistical bureau, Executive Committee, Western Traffic Association.

Q. What is the purpose of that bureau?

A. To compile either from reports, quarterly or other periodic reports, filed by the Western Railroads with the ICC, copies of which are furnished and also with the various State Commissions in the West. They have copies of those and they make various compilations and statistics for the information and help of the member railroads of the Association. That is their prime function.

12,478 Q. Referring to AWR Exhibit 57, can you indicate the area in which the Western Traffic Association operates?

A. Yes, if I may use this pointer and I will describe it as I go. It is the territory roughly, I would say a little bit over two-thirds of the total area of the United States which lies west of a line running around the West Bank of Lake Michigan, and as to some rates, the Indiana-Illinois Boundary, thence to its confluence with the Mississippi, thence down the Gulf of Mexico, all of the territory west of that line.

Now, I must make one exception, and that is that there is an organization, a rate-making organization which lies west of that line but which is not a part of the Western Traffic Association. That is the Illinois Freight Association. It has certain jurisdiction over rates within, and into the State of Illinois in some cases. But the Western Trunkline-- you see, that starts away over here in the State of Oregon and comes over to the Indiana-Illinois State Line (indicating on map.)

Also, it has the jurisdiction under its 5-A Agreement to make rates into Illinois territory. So for that reason, we included it on the map.

Q. Does the Illinois Freight Association have a separate 5-A Agreement?

A. Yes, they do. It is a completely separate organization from any. It is not a component organization of the Western Traffic Association, either.

12,479 Q. Now, Mr. Maguire, using the map, we have in addition this map --but we have no more easels. I will put this up when we need it.

THE COURT: Do you want to put that up there?

MR. FLYNN: I think we can put it up when we need it. I am not sure which one we will use first.

BY MR. FLYNN:

Q. Will you please describe the area of and authority of each of the component parts of the Western Traffic Association that acted with respect to freight rates?

A. Yes, sir. I will do so.

First, I will start from the big map -- I forget the exhibit number, Mr. Flynn.

Q. Exhibit 241.

A. --Exhibit 241. I will start over at the left of that page and work across. First I will describe the jurisdiction and activities of the Executive Committee of the Western Traffic Association. That committee is composed -- was at the time involved in this case -- composed of 30 railroads running all the way from Transcontinental Railroads down to some who are just as wide but much shorter. There are some rather minor railroads. But they were all mem-
12,480 bers of the Executive Committee. Geographically, their zone of operation pretty much covers the entire Western Territory, that is, you will find members of the Executive Committee who operate all over that Western Territory.

Q. That is the area west of the line shown on AWR Exhibit 57 which you described a few minutes ago.

A. Right, west of the Illinois-Indiana State Line and Rivers.

The Executive Committee has authority under the 5-A Agreement to make rates, engage in rate-making where the Western District as a whole is involved, and a particular example of that sort of rate-making, consists of these general increase cases which have been coming up with a fair amount of regularity ever since the close of World War II.

Q. Those are the cases in which the railroads requested a percentage increase?

A. Requested percentage increases up until the last one, when they had -- were ordered by the Commission to request selective increases.

Now that is the first thing they do in rate-making. Now, of course, they also have jurisdiction to, and do issue Section 22 quotations to the various bureaus of the United States Government if they are territory-wide.

Also, there is this, they act as a kind of a referee.

12,481 I just want to give an example here, so I am going to point to this map. Now, you see here is Southwestern territory down here, including Texas, Oklahoma, Arkansas and a couple of other states and Western Trunkline which is this part immediately north of that.

I am going to use an example of what could happen: Suppose that the Southwestern Freight Bureau were to approve the publication of rates which the Western Trunkline Committee members felt was inimical to their interests, and might throw their rates out of balance or something. The Western Trunkline can then request that this adjustment in the Southwest be considered by the Executive Committee which would, so far as the Bureaus are concerned, the rate-making organizations would have the final say. But, of course, for example, if the Executive Committee were to say, "Well, now, those Southwestern rates are really going to disrupt the rate structure of Western Trunkline Territory."

So, therefore, they say in effect, "We disapprove."

But, of course, that does not prevent the members of the Southwestern Bureau from taking independent action and putting those very rates in. But that does act as more or less of a mediating agency between the different rate territories or rate organizations in the West.

Q. Tell me what you mean by "Taking independent action."

12,482 A. I can best -- well, I can explain that very briefly. While mention is made of independent action in many places through the 5-A agreement, all mention where independent action may be taken under certain conditions is entirely subservient to one of the main first articles of the contract which says, --it is headed "Article 3: Individual Action:

"There is reserved to each member of this Association the free and unrestrained right to take independent action either before or after any determinations arrived at under any procedure here-in provided."

Then they go on to say that you can go through the rest of these articles of organization and procedure and if there is any provision in there which might otherwise be construed as a limitation or a restraint upon the right of any individual railroad, that provision is not mandatory nor binding upon the privileges of that member. In other words, whatever is said elsewhere in this contract, every member has the absolute right to take independent action whenever he sees fit to do so.

Of course the right of independent action also is extended to more than one member line, more than one member railroad. For example, if one railroad gives a notice of independent action and says, "Now, if I can get anybody to hook up at the other end of my run here to carry these rates through to the territories we want served," then of course they would do it, then the other line would fall in line with that and give their own notices of independent action.
12,483 So, it may either be done singly or in groups: And it could theoretically be done by every member of any one of the rate organizations here, giving notice of independent action in spite of the fact that the rate bureau might have formally made some decision otherwise.

But nothing can be shoved down the throats of any one of the member lines. That is the point I want to emphasize.

Q. You were reading what you referred to as Article 3, you were reading from AWR exhibit 239?

A. Yes.

THE COURT: Is that the 5-A Agreement?

THE WITNESS: Yes, your Honor.

BY MR. FLYNN:

Q. Does the Executive Committee of the Western Traffic Association, apart from this appeal and the section you have described, oversee the activities of the regional organizations?

A. No, they do not. The regional organizations are completely independent so far as the making of rates is concerning. They can do anything that their membership decides. Some of us, of course, are within the scope of the 5-A Agreement. But there is no -- let me say, the Executive Committee might be a misnomer. But we are not their bosses at all. We 12,484 can make suggestions to them and many times they do not pay any attention to us, they just go along the way they think is best for their own interest.

When I say "suggest," we can say that it is the general policy throughout the Western District that such a thing be done. But nobody has to pay any attention to that, if the different rate bureaus do not want it.

Q. Will you continue to describe the other organizations?

A. In order to do that, Mr. Flynn, I am going to have to ask that this other map be put up here, because I am going to describe the Transcontinental Freight Bureau.

Q. All right, I will do that (placing map on board.) That is AWR exhibit 56 to which you refer, the other map?

A. Yes, I think I am probably giving you the most complicated one of the bunch.

But the jurisdiction as it is known in these agreements of the Transcontinental Freight Bureau extends to traffic originating or terminating up here in this part of the map which is labeled "North Coast and South Coast Territory."

And it may travel between the North Coast and South Coast Territory, and any of these irregular-shaped groups which are on there, which have letters before them, even so far as here (indicating Seaboard) down into Florida. But, 12,485 of course where the rates get outside of Western Territory, then there must be concurrence of either the Eastern Railroads or the Southern Railroads, their agreement that those rates be changed.

But, in the Western District the Transcontinental Freight Bureau has primary jurisdiction over rates to Transcontinental groups.

Now, for example here -- (indicating on map) -- you will notice in some of these groups, let us take this one here. I am pointing up into the northern part of Minnesota. You have "F" and then "N" in parentheses. Before that you have "D-1" which is a sub-grouping of Group D, over here with an "S". Well, now that means, see, in their tariffs they have rates which are published to groups, to lettered groups. They call them the Transcontinental groups. So, up to this part of Minnesota, owing to the difference in distance you see, as between the North Coast to that group and from the South Coast to that group they take group efforts, if the group moves between this territory and the North Coast. Whereas, if it is between the South Coast it takes group D rates, which my recollection is a little bit higher than Group "F".

12,486 That is so you will not be confused as to the meaning of these different symbols on here.

Shall I describe the organization of this, or just the territory?

Q. I think the territory and authorities are sufficient.

Have you finished with that map now?

A. Yes, I am finished with that.

Now, then, your Transcontinental Freight Bureau jurisdiction extends over a wide territory because it involves a lot of long-haul traffic. I am going to take up next the Western Trunkline Committee.

That has some local rate-making organizations which deal with-- I will first describe the territory there. As you will see from the map, their territory goes all the way from the eastern boundary of Western territory through St. Louis--No, I think that is Kansas City if I am not mistaken-- yes, Kansas City. Then it goes down, takes the Southern boundary of Kansas, and then these little irregular dips here are caused by the fact that there is where a certain railroad is located, and that is the territory described. So then you take in Colorado, part of Utah, a little lower toward here (indicating) Wyoming, South Dakota, North Dakota, Nebraska, and these tariff states east of that, and the Southern part of Idaho and a little small corner down here in Southern Oregon.

12,487 Now, that is the Western Trunkline Territory, and the Western Trunkline Committee has the right or the power under the approved 5-A Agreement to make rates within that territory and also between that territory and any other rate-making one. For example, Western Trunkline would have to concur, in rates between Southwestern Territory, Western Trunkline or Eastern Territory and Western Trunkline, or Southern Lines Territory, and so on.

Q. Mr. Maguire, I think it is clear but I want to be sure:

The Western Trunkline Committee cannot establish a rate from the Western Trunkline Territory to the Eastern Territory by itself, can it?

A. Oh, no, no. It can only either concur in a proposal made by the Eastern Lines or else it may make a proposal with the Eastern lines, using that as an example, but there must be concurrence between all of the rate organizations involved, before the rates can be published.

Q. In securing concurrence does the Western Trunkline and the railroads in the Eastern organization get together to decide that rate?

A. Well, they can get together, as you say in several ways.

There is -- also there has been approved an interterritorial agree-
12,488 ment which covers not only the Western Traffic Association but also the type of Executive Association of the Eastern Railroads and also the Southern Freight Association.

THE COURT: Mr. Maguire, I think that has been explained. Will you try to explain it a little more, the interterritorial agreements?

A. Yes.

THE COURT: Who explained that?

MR. FLYNN: TEA 5050. I believe that is in evidence.

THE COURT: Has the jury heard an explanation?

MR. FLYNN: A brief explanation, I think perhaps a little bit more would be all right.

THE COURT: Give us a little more light on that.

THE WITNESS: I shall be glad to do that, sir.

Now, the interterritorial agreement is what Validates under 5-A, what I am going to describe. But I would use some examples better than try to explain it in the abstract.

Let us say that the Western Trunkline Committee, after proceeding as required in its 5-A agreement, its portion of the 5-A agreement, recommends rates, oh, let us say from Omaha throughout Eastern Territory. After that had been gone through the regularly prescribed procedure, if the 12,489 rate is approved, then the Chairman of the Western Trunkline Committee sends a printed or mimeographed sheet to the Chairman of the General Freight Traffic Committee of the Eastern Railroads. As a rule, it goes to that particular committee, and asks for their concurrence. Well, then they give consideration to that and they either concur in that rate, in which case instructions are given to the Tariff Publishing Officer to publish the rates, or else they decline to concur, in which case the thing is a dead issue. Because no one territory can put rates into another territory against the will of the member line in that territory.

BY MR. FLYNN:

Q. You refer to a tariff publishing agent. That would be a publishing -- a commercial rate, for example?

A. Yes, I am talking about commercial rates.

Q. Was essentially the same thing done with respect to rates to the government?

A. Oh, yes, yes. Because any number of times we will--what usually happens with the Government--

THE COURT: Excuse me, Mr. Maguire. Do you feel all right, the lady in the first row in the jury, juror No. 10?

JUROR NO. 10: No, I am all right.

THE WITNESS: Now, Your Honor, a quotation may arise in two different ways: Sometimes a government agency, it might be the Bureau of 12,490 the Department of Defense, or it might be the General Services Administration, will write to the Executive Committees of the three territories.

They will write a letter to me as Chairman of the Executive Committee for the West, and to Chairman Hill of the Eastern lines, and Chairman Boyle of the South and say that they would like to have these rates, and they usually name what rates they want tendered to them.

In that case each territory lists that for consideration by their executive committee and if all three of them agree that the quotation should be issued, then we issue a joint quotation in the name of the three chairmen and tender it to the government bureau. Or it might be that one territory would decline to go along, and if they did -- and the other two wanted to do it -- they would give them a quotation along the basis requested for application within and between their own territories and nobody else's.

12,491 Q. Now, in the instance you mentioned, where request would be made to all three on major rate territories, do the members of those various organizations ever meet together?

A. I'm just trying to think whether they have.

Q. Well, can they?

A. They can, yes. But that's usually handled by correspondence.

Now, I take that back. I do recall a couple of cases where they have met.

A meeting can be called under the interterritorial agreement at the request of any one of the three Executive Committee Chairmen. He will address a call to the other two and ask them to -- he will set a meeting place to have their member lines there. I think on one or two occasions we have had some discussion of requests of the government for the issuance of quotations. Those are what are called negotiated quotations.

Q. When such a meeting is held, do the Western Railroads, in deciding what action they will take, follow some procedure set forth in the interterritorial agreement, or do they follow the procedure set forth in their separate agreement?

A. No, they follow the procedure set forth in their own separate agreement. Each Territory does the same thing.

12,492 Q. And at those interterritorial meetings, each one of the three Chairmen is present and there is a vote.

A. If there is a vote called for, you don't throw all the votes into one pot at all. Each Territory votes separately and it must be adopted by each of the three Territories before it becomes national in scope.

It is simply this same procedure; first one rate group acting and then another concurring in that recommendation or efusing to concur.

Q. Does that apply to rates moving from or between any of these Territories shown in that map?

A. Yes, that applies between any two Rate Territories. It's broad enough to apply that way; although we do have our own provisions in our own Western agreement for our own interior concurrences and considerations; because our own rate connections, you take the Western Trunk Line and Southwestern, they have authority under our own articles, our 5-A Agreement, to hold a joint meeting.

But in each case, of course, there has to be a separate vote for each of the two rate-making bodies.

Q. Within the Western Trunk Line Committee, I believe you mentioned there are some sub organizations?

A. Yes, there are. They show on the large copy of this small chart which I have before me.

12,493 The Minnesota Lines Committee has since been dissolved and abolished, but at this time it was a separate organization.

There is the Colorado-Wyoming Committee, the Inter-Mountain Committee, the Colorado-Utah Committee, and the Northern Lines Committee.

Now, all of these committees, with the exception of the last one I named, the Northern Lines Committee, can make rates applying locally within their own respective Territories.

Now, if I can point this out here:

Here is the Colorado-Wyoming Committee Territory -- that is this dotted line here-- and then the Colorado-Utah Committee, and the Inter-mountain Committee.

Now, the Colorado-Wyoming Committee may make rates between Wyoming and the part of Colorado which is shown on this map.

The Colorado-Utah Committee, the same way, between Utah and that part of Colorado shown on the map.

The Inter-mountain Committee can cover pretty much up in here (indicating); local rates. But they can't make rates that go outside except to the extent of showing their various territories.

12,494 Now, however, the one exception to this confining territories is the Northern Lines Committee Territory, and that includes, you will notice, a great part of South Dakota, and about the upper two-thirds of Minnesota.

They may make rates that apply not only within their territories but also they must concur in any rates between their Territory and any other part of the country.

In other words, they have -- they are more like one of the bigger rate committees in that respect, and if they don't concur, for example, in rates down South in the Southern Lines Territory - up in the Northern Lines Territory those rates won't go in, they just can't go in; whereas, with these little committees over here in the Colorado-Utah and Colorado-Wyoming, if the Western Trunk Line Committee -- they are within Western Trunk Line Territory generally--if the Western Trunk Line Committee wants to put those rates in, they don't have to consult or get concurrence with these particular smaller rate groups. But you must all remember, of course, that the member lines of those smaller rate groups still have the right to say, "I will not concur in a rate," or "I want to concur in the rate" -- regardless of what the rest of the group says.

Q. How is the action that the Rate Bureau will take decided?

12,495 A. It's decided in three different ways:

It's decided by a vote of the member lines, or subject to the qualification that if you have a subsidiary, it and its parent line have only one vote between them. It's either sometimes by oral vote, word of mouth, or it's by written ballot, and the Western Trunk Line Committee have a kind of electronic device where all you do is press a button for yes or no, and the figure is all totaled up right away. That's the only one that has that.

Also there is such a thing as mail votes, where the Chairman may send out a circular letter to all the members of that committee, and ask for their vote upon a particular question as to whether or not a rate should be approved or not.

The same thing applies, I want to add here, to government quotations as well.

But if any member objects to the matter being considered by a mail vote, all he has to do is register an objection and then it goes upon your regular meeting calendar so that they will have full opportunity for discussion.

Q. What vote is necessary to secure approval?

A. A majority vote will secure approval. And when that approval 12,496 is registered, then the Tariff Publishing Officer for that particular rate organization is directed by the Chairman, and as a result of that vote, of course, a record is made of every vote that is taken -- as a result of that vote, to publish a tariff accordingly.

The lines that don't want to join in that rate, merely write to the Tariff Publishing Agency, and say, "Don't do that on my account," and they have the right to do that under this.

Q. Would you continue and point out the area of operations now of the other rate bureaus?

A. Yes. I think I have gone pretty much -- well, there is another Sub-Committee up here which I didn't mention. That is the State of Montana. The Montana Lines Committee. They have jurisdiction over rates in and out of Montana, and they are a sub-committee of the Transcontinental Freight Bureau. I forgot to mention that before.

Now, getting down here in the Southwest, that committee has its headquarters in St. Louis. It includes within its scope, however, the Texas-Louisiana Freight Bureau. The Texas-Louisiana Freight Bureau has 43 railroad members. A lot of railroads down in that part of the country. And they have the right, in this Bureau here, to make rates within the State of Texas, within the State of Louisiana over their respective lines, and be-
12,497 tween Louisiana and Texas.

The Southwestern Rate Bureau, however, has the power under the contract to make rates from anywhere else in Southwestern Territory into Texas and Louisiana or the other way.

And, of course, the Southwestern Freight Bureau may, with the concurrence of other Territories, big lines out in Pacific Coast, and the Western, and Eastern Territory.

Now, we have what we call six major jurisdictions, according to the size of Texas, the Texas-Louisiana Bureau, is included within the Southwestern Bureau. It is still the major rate bureau, and our major organization.

Then you have Pacific North Coast, or North Pacific Coast Territory. That is composed of railroads operating there. They have their Chairman and their organization in the City of Seattle, Washington. They have the right to make rates within this outline here, which is Northern California, most of Oregon, all of Washington, and what is called the Panhandle, this narrow part of Idaho out here.

They do publish some rates between North Pacific Coast Territory and
12,498 Montana. That is merely a matter of convenience, however.

The Pacific South Coast Territory you will see is quite a bit larger. That includes practically all of the State of California, most of the State of Nevada, all of Arizona, and the western one-third of New Mexico.

Now, the South Coast and the North Coast Bureau, as they are called, periodically have joint meetings to consider traffic moving in between those two Territories. I think it is every either two or three months, I am not exactly sure at this time. But I think that describes generally the rate-making organizations in the Western Traffic Association.

Q. Mr. Maguire, if a rate proposal is made to the Executive Committee for general application throughout the Western District, and is rejected by the Committee, are the Regional organizations foreclosed from adopting that proposal for their own Territory?

A. Not at all, or between their own Territory and any other Territory that will agree with them; they can still do it.

Q. Therefore, the fact that the Executive Committee had rejected the proposal would not be a barrier, to, let's say, the Western Trunk Line Committee adopting that proposal within its Territory, and Western Trunk Line 12,499 and Southwestern Freight Bureau adopting it between their Territories?

A. Yes, or the Western Trunk Line could adopt it with the Illinois Freight Association, or with the Eastern lines, or with the Southern Lines. There is no way that the Executive Committee can be a dictator on anything.

Q. Mr. Maguire, I show you a copy of Plaintiff's Exhibit 201 and supplements, the quotation issued October 20, 1955, by the Executive Committee of the Western Traffic Association, the TEA, and Southern Freight Association, and its supplements, and ask you if you are familiar with that?

A. Only in a general way, a very general way, because I was not -- I didn't become Chairman of the Executive Committee until a little bit over a year later -- that is, November 1, 1956.

Q. Do you know, Mr. Maguire, whether that quotation was ever filed with the Interstate Commerce Commission?

A. Yes, it was.

Q. What was the occasion for that?

A. Well, it was right after the amendment of Section 22 of the Interstate Commerce Act, which required carriers to file quotations, government quotations, with the Interstate Commerce Commission.

12,500 And I refreshed my memory, and if you have no objection, I will look at a little memorandum I made from my office as to when that was done.

Q. Just a second; may I have it, please?

A. Yes, if you can read my writing.

(Document shown to plaintiff's counsel.)

Q. Go ahead, Mr. Maguire,

A. All right.

Well, by the time we got around to October 31, 1957, there were -- we got down to the second amendment to this quotation which you just showed me here, the one of October 20, 1955. That bears the Western Number 76.

On September 27th -- If I didn't give the date, that was October 31, 1957.

On September 27 of 1957, the Interstate Commerce Commission had issued a general order as to the filing of government quotations pursuant to the amendment to Section 22 of the Act. That order became effective on November 1st.

Well, on October 31, the day before, we mailed to the Interstate Commerce Commission, in order to comply, and even lean a little bit backwards in complying with the new order -- we mailed in Amendment No. 32, which established some arbitrary charges for traffic over Puget Sound which I won't go into, unless you think it's necessary.

12,501 But the order of the Commission said that whenever you amended a quotation you should also file the outstanding original quotation, even though it had been rendered prior to the passage of the amendment of Section 22, and to file that together with all amendments which were then in effect.

So we just bundled up the whole works and sent them down to the Interstate Commerce Commission, and that was our first filing under the amended Section 22.

Q. Is Quotation 76 still in effect?

A. No, it is not. It is practically in effect, but technically it is not, because we make it a rule just as a matter of housekeeping, you might say, Tariff Publishing Officers do the same thing, that is, people who publish commercial tariffs, that when you get a certain number of supplements or amendments you get a pretty bulky document. And so we try to clean up, clean house on this thing.

Whenever we get, oh, around about 35 amendments to a quotation, we rewrite the quotation. But all that is, is, we just consolidate those amendments and have what comes out, which came out in this case, was Quotation 76 (a),

an interterritorial quotation. But all of these amendments had been merged into the document. There was no change in the document whatever, however, that is, no change in the effect, no change in the charges.

12,502 Q. And no change in the basic rates?

A. And no change whatever in the basic rates.

And that was re-issued and forwarded to the Department of Defense, Military Traffic Manager, I presume -- yes, I think that was Military Traffic Manager, at that time, for the Armed Services, and also a copy to the Commission, on June 16, 1958.

Q. Mr. Maguire, as Chairman of the Executive Committee of the Western Traffic Association, can you make rates for the railroads who are members of the WTA?

A. I cannot.

Q. Can you make rates for the members of the Executive Committee?

A. No.

Q. Do you have a vote on the rate proposals that come before the Executive Committee?

A. I do not.

Q. Can you propose a rate?

A. No.

Q. Can you negotiate rates on behalf of the members of the Executive Committee and bind them to what you come up with in your negotiations?

A. No, I cannot. The only thing I can do is that they still appoint a small sub-committee of their members to kind of explore the situation with

12,503 the Government Agency and they sometimes ask me to go along as you might say, as a mediator, or somebody to rap a gavel is about what it amounts to. But I don't have anything to say about what is going to be done, and before even that sub-committee can act, they report it back to the Executive Committee.

Q. Do you have a vote on the decision of the sub-committee?

A. I do not.

Q. Nor of the Executive Committee?

A. No.

Q. What persons represent the member railroads in the meetings of the Executive Committee of the Western Traffic Association?

A. They are always traffic officers. When I say a "traffic officer," that is anybody -- it can be a Vice President in charge of traffic -- or usually -- well, I generally have a pretty good representation of Vice Presidents, and then General Traffic Managers, who rank next to the Vice President. They are responsible officers.

Q. The General Freight Traffic Manager is usually the man right under the Vice President?

A. Yes, that's right.

Q. Do the same people represent the railroads at the meeting of the regional organizations?

12,504 A. No, they do not. You mean the same individuals?

Q. The same individuals?

A. No, they do not, necessarily. Because, for example, in the Western Trunk Line Committee, that is known as the Freight Traffic Managers Meetings, which they hold, they are usually freight traffic managers.

In the Transcontinental Freight Bureau they have the meeting of the Freight Traffic Managers who are the second men in line, you might say, followed by a meeting of their Executive Committee which consists of the Vice Presidents; the day after the Freight Traffic Managers adjourn their meeting.

Q. Mr. Maguire, would you look at page 8 of the articles which have been admitted as AWR Exhibit 239?

A. Yes.

Q. Right after the names of the railroads there it states that the members of the Executive Committee may be represented at the meetings by their Chief Executive Officer, Chief Traffic Officer, or such other officer as may be designated.

I assume the Chief Executive Officer would mean generally the President of the railroad?

A. That would mean the President or the Chairman of the Board or somebody like that.

12, 505 Q. Since you have been Chairman of the Executive Committee, have the railroads been represented by their Chief Executive Officers at your meetings?

A. Never have, no.

* * *

DIRECT EXAMINATION OF MR. CARPI

12,560 BY MR. McGLOTHLIN:

Q. You are aware, are you not, that Pennsylvania Railroad reduced its rates of ammunition and explosives for movement within Eastern Territory effective October 17, 1955, are you not?

A. I am aware we did, but I am not aware that is the exact date.

Q. What person or persons of the Pennsylvania Railroad made that decision that the railroad would make that reduction? A. I did.

Q. Did you submit your decision to anyone else? A. No, sir.

Q. You take the full responsibility for it? A. Yes, sir.

Q. In reaching your decision to reduce rates, tell us how you consulted the legal department as to whether you should or should not?

A. I did not consult the legal department about the measure of rates. I did, however, consult the legal department about the reparations aspect, the reparations complaint that was pending before the Interstate Commerce .

Q. Tell me to what extent, if any, you consulted with the Public Relations Department of the Pennsylvania Railroad with respect to a change, or

12,561 whether or not a change should be made.

A. None, whatever.

Q. Mr. Carpi, as vice president of sales of the Pennsylvania Railroad, do you from time to time attend meetings of an organization known as TEA-ER, Traffic Executives Association, Eastern Railroads? A. I do.

Q. There was a meeting, the evidence in this case shows, in May, 1955 of the TEA, at which two gentlemen, a General Lasher and a Colonel Flanagan, made a presentation. Did you attend that meeting? A. Yes, sir.

MR. McGLOTHLIN: May I have TEA exhibit 5001, please?

DEPUTY CLERK: Yes (handing to counsel.)

BY MR. McGLOTHLIN:

Q. I show you a document which has been identified in evidence as TEA exhibit 5001 which is entitled "Statement on Behalf of Department of Defense." Can you identify that?

A. I recall seeing it.

Q. Is it the written version of the statement made by Department of Defense? A. I believe so.

Q. Was the Department of Defense presentation the only matter considered at that meeting?

12,562 A. That meeting on that day? Oh, no.

Q. There were other matters, were there?

A. That was one of the many subjects that were considered that day.

Q. After the presentation of General Lasher and Colonel Flanagan, did representatives of the railroads ask any questions?

A. Yes, there were many questions asked, as I recall. In fact, I asked some, myself.

Q. Mr. Carpi, did the railroads receive from General Lasher or Colonel Flanagan any assurance as to the amount of traffic they would obtain if they made reduction requested by the Department of Defense? A. No, sir.

Q. None, whatsoever? A. No, sir.

Q. Mr. Carpi, would you turn to exhibit 12 of the TEA 5001 exhibit which is a table headed "Comparison of Explosives with other commodities showing ratio of revenue to out-of-pocket fully distributed cost." Do you have that before you? A. I do.

Q. It has there listed, I believe, six commodity classifications--explosives, magnesium metal, military vehicles, office machines, cigarettes, and machinery--in what way, if any, was that material to the presentation being

12,563 made by the Department of Defense as far as you can tell?

A. Its purpose is to show that the revenue and explosives was rather high in comparison with other commodities which moved rather freely.

Q. Mr. Carpi, on the basis of the presentation by the Department of Defense, at the May meeting of the TEA, what impression did you gain as to what would happen to the railroads' ammunition and explosives business in the absence of the rate reduction?

A. I was quite shaken by what we developed at this public hearing as well as information that was filtering through to me before that time as to the

possibility of our remaining in explosives transportation business.

Q. What did you understand, what impression did you have, if you continued at your present rates?

A. I became convinced something had to be done if we wished to remain in the business of transporting explosives. I became definitely convinced of that.

Q. Any rate reduction lessens the amount of money that the railroad gets from carrying a hundred pounds ten miles, does it not, assuming it can carry it?

A. That is obvious. If you reduce the rate and you retain the business, you will handle it for a less amount of money.

12,564 Q. What was your idea as the deciding man, as to whether a rate reduction should be made?

A. Well, we had at that time the war reparations cases before us. We had originally had them decided in our favor. There was a period of time there where we heard rumors to the effect that they would ask for reconsideration. I consulted our Legal people many times on the matter of -- being lawyers, they wanted to win every case. They advised me very strongly not to do anything during the pendency of that proceeding.

Q. Well, do you have any problem as to balancing loss of traffic against loss of income per unit?

A. I don't quite understand your question.

Q. Well, I understood you to say you gained the impression that to remain in the ammunition and explosives business some rate reduction was necessary? A. Yes, sir.

Q. I understood you further to say that on the other hand a rate reduction lessens the income of the railroad per each unit that it does carry.

A. Yes, sir.

Q. My present question is: How did you deal with those factors in considering this matter?

A. Well, up to the early part of 1955, all we had had from the Armed Services were threats of diversion.

12,565 Q. Keep your voice up a little, please. A. Pardon me.

Q. Talk louder, please.

A. Up until May of 1955 we had had threats of diversion from the Army. I might say this request for reduction including the one from the army, probably went back to 1942 when I had several conferences with General Williamson who was then in charge of traffic for the Army. During all of those years intermittently the Government kept pressing for reduction. But it really never bothered us a great deal because there had been no substantial diversion up to that time.

Q. Go ahead.

A. However, beginning with 1955, or the latter part of 1954, probably, this traffic began to leave us in great volume. At the time, in the middle of the year I believe that we had reached the point where we were handling substantially less than half, so it became a very simple question for me to decide -- I did not know whether to run the risk that our lawyers said existed or whether I should move on. Of course it was my responsibility and I could not bear the loss of this traffic. So, I decided notwithstanding the advice of my legal people, I would do this -- I had to do this.

* * *

12,570 Q. There is also an indication on the second page of the document, Mr. Carpi, that Mr. Talbot recommended that the subject of the point-to-point rates at Class 40 that had been given to the railroads by the Armed Services during the summer of 1955, should be discussed at the September 15th meeting of the TEA. There was indication on the letter of "Yes." Do you recall the basis for your decision that that discussion should be asked for?

A. Yes, I agreed with them.

Q. Why did you think it ought to be discussed?

A. Because the situation was rapidly coming to a head, and I concluded about that time -- I am not sure about the exact date -- that unless positive action

was taken, the erosion would not stop.

12,571 Q. By "erosion," what do you mean? A. Loss of business.

Q. To whom? A. To the trucks.

Q. Mr. Carpi, have you personally made any spot-to-spot quotations, or personally approved any spot-to-spot quotations during the summer of 1955?

A. During the summer of 1955?

Q. Yes. A. I do not recall.

Q. The members of your staff -- speaking now of these particular ammunition and explosives quotations -- but spot-to-spot quotations generally, do members of your staff have that privilege?

A. Yes, they do.

Q. Without seeing you? A. Yes.

Q. Does any member of your staff have authority to make the decision on the general commodity exchange on ammunition and explosives?

A. No, sir.

Q. Mr. Carpi, Mr. Talbot testified that sometime between the conversation we just discussed relating to Pennsylvania Railroad exhibit 4, and a meeting of the TEA on September 15, 1955, he discussed with you his recom-

12,572 mendation that the railroads offer the Armed Services, offer the Government, an ammunition and explosives rating for movement in Eastern territory of Class 45 on a 40,000 pound minimum, 80 per cent of 45 on the excess. Do you recall such a discussion with Mr. Talbot? A. Yes, sir.

Q. What was your procedure, your normal procedure, Mr. Carpi, with respect to matter which would be -- matters which were docketed for consideration at an approaching TEA meeting?

A. Well, invariably the practice is that sometime before the meeting, that all of the subjects were listed, mostly for the purpose of briefing me. Also we might develop any further information that I thought was essential. We do that sometimes two or three days before the meeting but sometimes on the day before the meeting. It is done sometimes en route to the meeting, depending on conditions as we might find them.

Q. You spoke of "We do that." Do you have such discussions with persons other than Mr. Talbot?

A. Sometimes, Sometimes Mr. Talbot has some assistants with him.

Q. Were there other topics docketed for the September 15th meeting of TEA?

A. I did not attend the September 15th meeting, as I recall it. There 12,573 are topics, running from 30 to 60. I do not recall any being less than 30 at any particular meeting.

Q. In your discussions with Mr. Talbot as to the formula he had developed, did you agree with him or disagree with him that this formula should be proposed by the Pennsylvania Railroad?

A. I was very much in favor of it.

Q. Can you tell us what formed the basis for your approval of it? Why were you so much in favor of it?

A. Because it embodied the things that I thought very important -- more particularly the incentive loading feature, whereby they offered an opportunity to obtain additional business per car at very little, if any, expense.

Q. That is, it is to the advantage of the railroads to have the cars loaded heavy, is it? A. Always.

Q. Were there any other reasons you now recall for approving this formula rather than the army proposal?

A. Oh, yes. There were several reasons. One that I recall was the fact that when any important movement taking place at that time was under Class 40. Higher than that would not help us.

Q. The proposal Mr. Talbot was made to you, Mr. Carpi, works out to 40-1/2 per cent of first class at 80,000 pounds rather than the 40 per cent that 12,574 the Army proposed at 80,000 pounds. What, if anything, did that have to do with your approval?

A. Well, that was one of the factors. As I said before, we knew that any important movement that was taking place at that time was moving under

Class 40. We knew that anything higher than that was going to help us.

Q. Had Pennsylvania Railroad had any experience with an 80 per cent incentive factor rate prior to this time?

A. Oh, yes, yes, indeed.

Q. Do you recall any commodities that had been used at all?

A. Tobacco, cigarettes, and commodities like that.

Q. Mr. Talbot testified, Mr. Carpi, that he also suggested to you that for interterritorial movement a rate of Column 55 or 55 per cent on a minimum weight of 50,000 pounds with an 80 per cent incentive factor on the excess should be closed by the Pennsylvania Railroad. Do you recall discussing that with him at all? A. Yes, sir.

Q. Tell me, did you approve that as a proposal he made? A. I did.

Q. That is a higher basis than the basis approved -- at least a higher percentage. Can you tell me why you approved different bases for different territorial and inter-territorial movements?

12,575 A. Yes, sir. The hauls between the east and the west were much longer than within our territory. I thought that competition might not be as severe on those longer hauls and I was willing to try it, although I had my doubts about it at the time.

Q. In your mind at that time, Mr. Carpi, in your judgment, you did think that the formula that you had approved would be effective to obtain 90 percent of government ammunition and explosives traffic? A. No, sir.

Q. In your judgment were these rates so low thaty they would exclude truckers from ammunition and explosives traffic? A. Of course not.

* * *

12,576 Q. The evidence shows, Mr. Carpi, that at that meeting action was not taken but a special committee was formed, and that the special committee adopted the proposal that Mr. Talbot brought in and that the report of the special committee recommending that proposal was presented to TEA at a meeting in Washington on September 26, 1955. Did you attend the September 26th meeting?

A. I did.

Q. At that time the record indicates that the Eastern Railroads adopted for movement within Eastern Territory the rate of 45 per cent on 40,000 pounds and 36 per cent on the excess loading incentive per car. Did you you vote on that proposal? A. I did.

Q. How did you vote? A. I voted for it, favorably.

Q. Mr. Carpi, the evidence shows at that time there was pending undecided a petition by the Department of Justice for re-opening the Reparations 12,577 Case? A. Yes, sir.

Q. Why did you decide to lower rates so far as the Pennsylvania Railroad was concerned, even though the Reparations Case was still pending?

A. Well, I thought I had answered that previously here.

Q. Maybe you did. The fact escapes me.

A. Well, I decided to disregard the recommendations of our counsel. It is my responsibility to produce the revenues for this railroad. I became convinced that unless I took this chance or made this decision that it would have a very serious and adverse effect on the Pennsylvania Railroad.

* * *

12,608 Q. This would indicate of the total freight transportation of the United States, the portion carried by the railroads has steadily diminished since 1946, Mr. Carpi? A. Since 1943.

Q. Does that accord with your experience? A. Yes, sir.

Q. Mr. Carpi, you said earlier in your testimony that in your judgment at the time you decided upon the rate reduction, you believed that motor trucks could continue to compete at the new rate levels, did you not? A. I did.

Q. Would you tell us the basis for that judgment?

A. Well, there are several factors upon which I could predicate that statement. First, the trucklines, then and now published countless rates on 12,609 a much lower basis, some as much as a fourth of the base of explosives level.

The other factor upon which I base my statement is that I am director of a couple of trucklines that do a very substantial over-the-road business and

I am familiar with their methods and costs and so on. I know that they would be most happy to handle as much of this explosives business as they could get.

Q. At the present rate levels?

A. Yes. They could make a lot of money at that rate level.

Q. Let me deal a minute, Mr. Carpi, with your statement as to your experience as a director of two large truck lines --

A. I am director of about ten trucklines. These two large ones perform over-the-road operations exclusively.

Q. How long have you been a director of trucklines doing an over-the-road operation?

A. I have been a director of one company for over 20 years: The other company just a short period -- a shorter period.

Q. Can you give us the names of the two as you referred to as over-the-road large companies?

A. One is the Baltimore Transfer which, in turn, controls the Motor Freight Express, and the other is the Cleveland Cartage which owns and controls, in turn, the Western Transit.

12,610 Q. Give me some idea of the territory which each of these serves?

A. Western Transit operates from Chicago to Boston, and a lot of intermediate points, of course, Motor Freight operates from Pittsburgh to New York, Harrisburg, York and so on. Baltimore Transfer operates from Richmond, Virginia, to New York.

Q. Can you give me some notion of the volume of business these truck lines do?

A. Those two truck lines together had a gross last year exceeding $20 million. About $10 million a piece -- a little over ten million apiece.

Q. You said you were a director of these two trucklines. How does that position enable you to have any information as to operating costs of over-the-road motor trucks?

A. Well, these two companies are practically -- all of our business is over-the-road. Meetings are held monthly at which cost statistics are produced, to indicate the cost per unit, maintenance cost, all operating costs,

including maintenance. In addition these companies filed reports with the ICC in much the same manner as the railroads. In addition, we have additional information provided from time to time as the directors request.

12,611 Q. The Pennsylvania Railroad I take it, is the stockholder of these two companies? A. Yes, sir.

Q. Controlling stockholder? A. No, sir.

Q. Does it have working control? A. No, sir.

Q. Mr. Carpi, on the basis of your knowledge of motor trucking, if a trucker in a period did not carry a particular commodity such as refrigerators or manufactured iron and steel, or ammunition and explosives, is the equipment that he did use in carrying that commodity useless to him while he was not carrying the particular commodity? A. Oh, no.

Q. Why not?

A. Well, the usual type of equipment used by most motor carriers is the ordinary vantype body which can be used for anything outside of liquids or other types of commodities.

Q. Any dry cargo?

A. Any packaged cargo.

12,612 Q. Mr. Carpi, you testified a moment ago that in your judgment the truck lines with which you are familiar would be happy to carry ammunition and explosives, I believe you said, at the present rates? A. Yes, sir.

Q. And by the "present rates," to what were you referring?

A. I am talking about Class 45 --

Q. Class 45 and 36 on the excess over 40,000 pounds? A. Right.

Q. It has been suggested, Mr. Carpi, that there is some additional cost factor in connection with ammunition and explosives because of the hazards involved in transporting ammunition and explosives. In your judgment, is that factor sufficient to explain the discrepancy between Class 45 and the 36 on the excess over 40,000 pounds and the lower truck rate to which you referred on other commodities? A. No.

Q. Mr. Carpi, you are aware that one of the charges in this case is

that the rate reduction was made by the Eastern railroads in October of 1955 with the intent of driving out of the ammunition and explosives business an organization known as Riss & Company. As the man who made the decision on behalf of the Pennsylvania Railroad, did you have such an intent?

12,613 A. No, sir.

Q. To what extent did you have familiarity at all with Riss & Company?

A. At that time, I didn't know Riss.

Q. When you speak of, "Riss," do you mean Mr. Riss or Riss & Company?

A. Riss & Company or anybody with them.

Q. Had you heard of other truckers who were handling ammunition and explosives?

A. I had heard of some, yes.

Q. Can you give us a few names you had heard of?

A. Yes. Whitney, Bagley --

Q. Bagley or Baggett?

A. Baggett, Watson Brothers. Hayes. Roadway. Did I give Watson? Watson. Red Star. Interstate. Super Service. That is about all I can think of now. As I recall, there were 25 or 30 active.

* * *

Q. Mr. Carpi, some days of the trial have been devoted to matters relating to I.C.C. proceedings, which hearings were held in 1951 and 1952. It 12,614 is sometimes called the Explosives case, sometimes called the Riss & Company Consolidated Cases. Its designation before the I.C.C. was MC 200 Sub 84 and Consolidated Cases. It is not disputed that the Pennsylvania Railroad was involved in that case in opposition to the applications of the motor carriers. The case involved the applications of a number of motor carriers for permanent authority to carry explosives. Now, tell me to what extent, in what way, if any, you were concerned with any activity of the Pennsylvania Railroad in connection with that litigation I just described?

A. I was not involved at all in that litigation.

Q. Do you recall being informed of it at all?

A. Yes, I have a hazy recollection of having received a report or two.

Q. There is another litigation referred to in this case, Mr. Carpi, which is called MC 200 Sub 60 TA. That was a petition by several railroads, including the Pennsylvania Railroad, for a cease and desist order by the Interstate Commerce Commission to Riss & Company that it stop operating beyond the terms of its temporary authority. The Pennsylvania was one of the petitioners in that case.

12,615 Can you tell me to what extent if any you had participation in anything the Pennsylvania did in that case?

A. I took no part in that at all.

Q. Do you recall having become aware of it at all?

A. No, I don't. At this moment, I do not.

Q. Finally, there were two proceedings which were conducted jointly by the I.C.C. One of them was a complaint by the Public Utilities Commission of Ohio against Riss in the I.C.C., asking that Riss' operating rights through Ohio be withdrawn. Subsequently, the Interstate Commerce Commission initiated a safety investigation of Riss' operations in all territories; and the two proceedings were consolidated before the I.C.C.

It appears in evidence that the Pennsylvania did not intervene in the Ohio proceeding, but did participate in the safety investigation by the I.C.C.

Tell me to what extent if any you had anything to do with those proceedings?

A. I had nothing to do with them.

Q. One of the attorneys for the Pennsylvania Railroad in each of those proceedings was Lewin Wickes, whom I have mentioned earlier. Do you recall when you first met Mr. Wickes?

A. No, I don't. In fact, I think I said this morning I hardly know the

12,616 gentleman. I don't suppose I would know him if he walked in this room.

Q. In reaching your decision as to the rate reduction, tell us what part if any these I.C.C. Proceedings I have talked to you about, or anything relating

to them, had on your judgment? A. None whatsoever.

Q. There has also been testimony in the case, evidence in the case, Mr. Carpi, with respect to certain publicity of which the plaintiff complained. Tell us what if anything any such publicity had to do with respect to your decision that the Pennsylvania was going to reduce its rates?

A. Positively none.

Q. Mr. Carpi, in your position as vice president of sales, tell us whether you would be in position to know about any agreement or combination between the Pennsylvania Railroad and any other railroad or railroads to attack some other organization?

MR. WRIGHT: If the Court please --

THE COURT: Are you objecting?

MR. WRIGHT: Yes.

THE COURT: On what ground?

MR. WRIGHT: It is perfectly apparent from what the witness has said he is in no position to draw any such conclusion at all. He wasn't even aware, 12,617 according to his testimony, of what the matters are that are the subject of the conspiracy complaint here.

THE COURT: All right. I think I will sustain that objection. You can develop what knowledge he has, personal knowledge.

MR. McGLOTHLIN: That is what the question was, Your Honor.

THE COURT: Personal knowledge?

MR. McGLOTHLIN: The question was, in his position, to what extent was he in a position to have personal knowledge of any agreement made by the Pennsylvania Railroad on this subject.

THE COURT: Any agreement to what?

MR. McGLOTHLIN: Any agreement to attack another organization.

THE COURT: Well, I will let him answer.

THE WITNESS: I had no knowledge.

BY MR. McGLOTHLIN:

Q. No, that is not the question, Mr. Carpi. The question is this:

By virtue of your position as vice president of sales, would you know if the Pennsylvania Railroad entered into an agreement with another railroad to attack another organization on traffic matters?

THE COURT: Wait a minute. Let me ask you a question on that.
12,618 Wouldn't that call for knowledge on his part of all of the activities or many of the activities of several people connected with his company?

Now, members of the jury, if the Court asks a question, you should not draw any inference from my question. I am seeking information.

Unless he is in a position to know what the various people were doing in his organization, wouldn't that call for speculation on his part?

MR. McGLOTHLIN: I don't think so. Here is the man who made the decision on the rates. He will, if allowed to testify, I believe, testify he was in a position to know of any such agreement or combination.

THE COURT: You mean, of any so-called alleged conspiracy?

MR. McGLOTHLIN: I said, agreement or combination. I haven't used the word "conspiracy." We are alleged to have agreed, combined and conspired. Now, either we did or we didn't.

THE COURT: Well, I will let him answer. He can be cross-examined on that. All right.

THE WITNESS: In the normal course of events, an arrangement of that kind would certainly be discussed with the executive staff of the railroad.

THE COURT: Let me ask a question on that. You mean, in the normal
12,619 course of events, that people who entered into a combination, agreement or conspiracy, would ordinarily discuss it with other people?

A. Yes, sir, Your Honor.

THE COURT: All right, proceed. Proceed.

MR. McGLOTHLIN: Do you want to continue with your answer?

THE COURT: You may proceed.

THE WITNESS: Why, yes, Your Honor. It is customary, when anything new in policy, no matter how trivial it might be, but it is something we never had before, to discuss with what we consider or call ourselves as executive

officers, about six or seven, and we are kept informed; we inform each other what is going on and we seek each other's approval to a lot of these things, especially if it is a novel idea.

BY MR. McGLOTHLIN:

Q. Well, if such an agreement to attack another organization related to traffic in a particular commodity, would it come to your attention?

A. Oh, absolutely. In fact, no agreement of any kind is approved without my seeing it first.

Q. That is if it relates to traffic?

A. Not only to traffic, but other matters as well.

Q. Let me ask you this: In the period 1948 on, since you have been
12,620 vice president, have you heard of any agreement or combination between the Pennsylvania Railroad and any other organization to drive truckers out of business in any commodity? A. I have not.

Q. Have you heard of any such agreement to drive truckers out of ammunition and explosives? A. I have not.

Q. Have you heard of any such agreement or combination to drive any particular trucker out of any commodity? A. No, sir.

Q. To the best of your knowledge, did any such agreement or combination exist? A. No, sir.

* * *

CROSS EXAMINATION

12,656 BY MR. WRIGHT:

Q. Was it when the Pennsylvania Railroad first began to feel the pressure of truck competition for explosives traffic?

A. Late 1954 to a serious extent and 1955.

Q. You did not feel it in 1950?

A. We felt it but it was not of a serious nature.

Q. You felt it in 1951, too, did you not?

A. Yes, sir, we felt it in 1951. That is correct. But we did not consider it to be of a serious nature at that time.

Q. Actually, I think you said during the first World War you handled all of the ammunition and explosives movement for the Government, isn't that correct?

A. That is correct.

Q. The Second World War, excuse me. A. That is correct.

12,657 THE COURT: The Second World War, yes.

BY MR. WRIGHT:

Q. During the Korean War the truck handled a very substantial part of the business for the Government, did they not? A. Yes.

Q. They handled a substantial amount, did they not?

A. I said they handled some.

Q. You do not know what the figures were, have no idea how much the trucks handled during the Korean war? A. No, I do not.

Q. And actually throughout the Korean War the Defense Department was exerting pressure on the railroads to reduce those rates, was it not? The rates on ammunition and explosives?

A. I do not think I heard you. I wish you would speak louder.

Q. I am sorry. I say during the Korean War there was some substantial pressure from the Defense Department upon some railroads to reduce their rates on ammunition and explosives, isn't that correct?

A. That is correct.

Q. And, during the same period there was also substantial competition from the motor trucks for that business, isn't that also correct?

12,658 A. No, I did not consider the competition of a serious nature during the Korean War. We had all of the business we could handle.

Q. Regardless of whether you had all of the business you could handle, the trucks were in the business you could handle, the trucks were in the business at that time in a very substantial way, were they not? A. On explosives?

Q. Yes. A. I do not believe so.

Q. You do not think they were? A. No.

Q. Now, then, it is your impression, is it, that there was no substantial truck competition for the explosives traffic until after the Korean War had ended?

A. That is what I attempted to say.

Q. And during that -- that would be the first full year after the Korean War ended would be 1954, would it not? A. Yes, sir.

* * *

12,659 Q. Was there or was there not during the year 1954 substantial competition between the railroad and motor trucks for the business of transporting ammunition and explosives shipped by the Defense Department?

A. I said before that we began to feel the competition of the motor trucks in transportation of explosives in the latter part of 1954.

Q. Your testimony is then, I take it, that during the early part of 1954 you did not think there was substantial competition between the rails and trucks for this business, but that there was during the latter part of 1954, is that correct?

A. Yes -- no, I would not put it that way. The competition was growing. It was not a thing that sprung up overnight. It became more intense. I 12,660 cannot answer your question the way you want me to answer it because it is not a fact.

Q. Well, facts are all I want, Mr. Carpi. If you just answer it the way you want to answer it, providing we know what you are saying.

A. I would like to know what you are saying so I can answer your question.

THE COURT: Let me give you a piece of advice. Do not try to read Mr. Wright's mind. I will ask Mr. Wright not to try to read your mind. You answer the question, if you can. If you can't, tell me you can't understand it and we will have another question.

BY MR. WRIGHT:

Q. What I am trying to establish just as precisely as I can, Mr. Carpi, when it was that in your view the competition of the motor trucks for government ammunition and explosives business became substantial.

A. Late 1954 and early 1955.

Q. Now, by late 1954, you mean when? Can you give us a month?

A. No, I would say the fall of 1954.

Q. The fall of 1954? A. Yes, sir.

Q. That was when it first became substantial? A. In my judgment.

12,661 Q. In your judgment. Now, at that time the Defense Department was -- as it had been for some years previously -- continuing to exert pressure on you to reduce the rail rates on ammunition and explosives.

* * *

THE WITNESS: I do not believe that the Defense Department renewed their request in the fall of 1954. I think they renewed their request in the spring of 1955.

BY MR. WRIGHT:

Q. What you are now telling us is that during the fall of 1954 you had no knowledge of any request made by the Defense Department to the railroads to reduce their rates on Government ammunition and explosives?

A. I do not recall that they had a formal request on us in 1954, no.

Q. I was not talking of formal request, Mr. Carpi. I am directing your attention to --

A. Or any request.

Q. To a request of any kind. A. Of any kind, correct.

Q. Your recollection is there were no requests of any kind made for

12,662 a reduction or reduced rate during the fall of 1954?

A. That is correct.

Q. Now, you had, had you not, during 1954 and during preceding years, made so-called point-to-point quotations. Section 22 quotations in which you reduced your rates to meet truck competition?

A. I do not recall we made any in 1954. I think we made some in 1950 or 1951.

Q. You had at least in the past made this special section 22 quotation on a point-to-point basis to meet this truck competition, had you not?

A. Yes, we made a few back in 1950, as I recall it. But none in 1954.

Q. And whenever you wanted to do so, you could have put in, during any of that period, a section 22 quotation, point to point, to meet any truck

competition you wanted to meet, could you not? A. I could have?

Q. Yes. A. Yes, I could have.

Q. Now -- and I understood you to say on your direct examination that during 1955, just before this general rate cut was adopted, you had again put in a point-to-point quotation to meet truck competition? This was now -- I am referring specifically to the quotation that you said Mr. Talbot recom-
12,663 mended that you not put in, and you said you had to put it in. A. I did.

Q. That was, I take it, a point-to-point quotation? A. Yes.

Q. Made to meet truck competition? A. Yes, sir.

Q. Now, I think you also testified about what you said was competition among the railroads, themselves. A. Yes, sir.

Q. And you said that that extended to explosives traffic -- government explosives traffic? A. Yes, sir.

Q. Now, can you give me an instance, Mr. Carpi, where the Pennsylvania Railroad put in a point-to-point quotation that provided a lower rate, than that offered by another railroad or transportation between the same points?

A. I do not know of any case like that. That does not say we do not have competition, though.

Q. What I want to be sure about, Mr. Carpi, is that you give us your best recollection as to whether that has happened, whether the Pennsylvania Railroad has or has not at any time quoted to the Military Department a rate
12,664 for the transportation of ammunition and explosives which was below the rate offered the Government by another railroad?

A. I do not recall of any.

Q. Don't you know as a matter of fact there has not been any?

A. I could not say there has not been any because I do not know.

Q. Well, can you recall, Mr. Carpi, any instance where another railroad has offered to the Defense Department any rate for carrying ammunition and explosives between any two points, by the Pennsylvania which was lower than the rate offered by the Pennsylvania?

A. Yes, I can recall that. There are a number of cases like that. For example, Norfolk and Western and Virginian, I believe, offered the Government a lower rate from a point in Virginia to the West, and I was forced to meet it.

Q. What I am talking about, Mr. Carpi, is the situation where you quoted the Government one rate -- a Section 22 quotation -- and then another railroad came along and said, "We will transport it for less." Can you tell me of any instance of that kind?

A. No, I do not know of any.

* * *

REDIRECT EXAMINATION

BY MR. McGLOTHLIN:

12,752 Q. Mr. Carpi, I show you plaintiff's exhibit 292, which I believe is in evidence.

A. Yes, that was put in evidence yesterday.

Q. Is that in evidence, Mr. Clerk?

DEPUTY CLERK: Yes.

BY MR. McGLOTHLIN:

Q. This is a letter written at your direction, I understand. Is that correct?

A. Yes, sir; that is correct.

Q. In the last paragraph of the letter it reads as follows:

"It is suggested that the expiration date be continued and the subject placed upon the docket to be considered at an Association meeting in the late summer at which time the carriers can review the effectiveness of this adjustment and then determine whether it should be placed upon a permanent basis." Do you see that?

A. Yes, sir.

Q. Now, you refer to the effectiveness of the adjustment. What was the effect that you hoped for in this --

A. Well, Mr. McGlothlin--

MR. WRIGHT: If the Court, please, this is not cross examination.

MR. McGLOTHLIN: I am asking him to explain a document.

12,753 MR. WRIGHT: This is not proper redirect examination. I did not go into his purpose at all.

THE COURT: Did you go into this part in your direct?

MR. McGLOTHLIN: This was put in on cross examination. Asking him what he meant by a word in the document.

THE COURT: Let him proceed.

THE WITNESS: Mr. McGlothlin, I testified yesterday that we had been receiving--

BY MR. McGLOTHLIN:

Q. Just confine yourself to the word in this letter, the meaning of the effect--

A. I am coming to that. I said I testified yesterday I had been receiving many reports about this situation and that in order to get the facts straight from the horse's mouth, as you might say, I made several trips to Washington to see General Lasher and Colonel Flanagan. I was convinced that they had the bit in their teeth and they were going to do everything possible to get the rates reduced and my concern was our ability to remain in this business. So I was not willing to continue these reduced rates unless I was satisfied that we would remain in the business of transporting explosives. If the erosion had continued, down or trickled to nothing or practically nothing, I would have canceled the rates.

12,754 Q. There came a time later in the year, I take it, that you did agree to the withdrawal of the expiration date.

A. Yes. I was reminded that was in July, 1956.

Q. Did you then think that the rate reduction had stopped the erosion of traffic? A. I did.

* * *

DIRECT EXAMINATION OF T. M. CAIAZZA BY MR. FLYNN

* * *

12,854 Q. I show you AWR Exhibit 260, which is headed "Proceedings of special meeting Executive Committee - Western Traffic Association, May 26, 1955," and ask you if that is the record of the meeting to which you refer?

A. Yes, that's right.

MR. FLYNN: I will offer that, Your Honor.

THE COURT: It may be received.

(Thereupon document, "Proceedings of special meeting Executive Committee-Western Traffic Association, May 26, 1955, marked for identification Defendant No. 2 (AWR) Exhibit No. 260, was received in evidence.)

BY MR. FLYNN:

Q. What action was taken as the result of that meeting as shown by the record, Mr. Caiazza?

A. The study was taken under advisement by the members of the Executive Committee and the Chairman was directed to arrange a regular meeting of the Executive Committee for June 14, 1955.

Q. Was that meeting held? A. Yes, it was.

Q. Did you attend that? A. No, I did not.

12,855 Q. Did you receive notice of the action taken at that meeting?

A. Yes.

Q. I show you AWR Exhibit 261, which is headed "Proceedings of meeting Executive Committee - Western Traffic Association, June 14, 1955." and ask you if that is the record of the meeting that you received? A. It is.

Q. What action was taken at that meeting?

A. Recommended, that a joint meeting of all jurisdictions -- Eastern, Western and Southern Lines -- be convened before any definite action was taken.

Q. Did that mean that you were to have an inter-territorial meeting before you decided what to do about the Army's proposal? A. That's right.

Q. Prior to the interterritorial meeting, did the Santa Fe reach any decision as to the action which it thought should be taken with respect to the

proposal made by General Lasher and Col. Flanagan?

A. No, we hadn't taken any action yet.

Q. Did you reach any decision as to what action you should take?

A. Yes, we had reached a decision in view of the truck competition that we had to make some kind of a reduction in the general basis on ammunition
12,856 and explosives.

Q. Did you believe you should make the reduction that the Army proposed? A. No.

Q. What reduction did you favor?

A. We felt that in view of the trucking situation and the lessening of our revenues, that in our judgment we should propose a Column 55 rating of first class, with minimum 60,000 pounds.

Q. Did you make any estimate of the amount by which that reduction would reduce your revenues on the volume of traffic you were then handling?

A. Yes, we did. We estimated on the traffic we were then handling in 1955, that if we had a general basis of Column 55, our reduction would amount to approximately $500,000.00.

Q. Did you consider that by making that reduction you would be giving up a half-million dollars you would otherwise get?

A. No, we did not. It was based on the present level, and our traffic was deteriorating, going down, and we felt that if we hit a general basis of Column 55, that it would have the effect of retaining -- we hoped that way -- of retaining our present level and possibly regaining some traffic to overcome some of our loss.

* * *

12,860 THE COURT: Any objection to 261?

MR. WRIGHT: No objection, no. I thought it was received.

THE COURT: It may be admitted, then.

BY MR. FLYNN:

Q. Referring to the letter, can you tell us what the terms of that request were?

A. This letter, without reading it all here, was the basis that Mr. Hill said the Army indicated we had to quote a 40 per cent for the first class rate, minimum 80,000 pounds, and if we did quote such a rate we would secure quite a bit of traffic.

Q. Was the traffic referred to in that letter, traffic which would originate on the Santa Fe?

A. Yes, and G. M. & O.

Q. Are the points named in that letter of the particular movement?

A. I don't see them here. I don't think so.

Q. Can you tell from the fact that that says that traffic would originate on the Santa Fe and the G. M. & O., what installation that would refer to?

A. What it suggests is Joliet.

Q. How much traffic was involved in that proposal?

12,861 A. Well, I will read it:

"5,280,000 pounds to a destination in Iowa served by the C B & Q;

"11,000,000 pounds to a destination in Nebraska served by the C B & Q and UP;

"1,760,000 pounds to a destination in Kansas served by the M K T."

Q. Are those substantial movements of ammunition and explosives traffic?

A. It certainly is as far as we are concerned.

Q. What action did you take with respect to that request?

A. We were not in favor.

* * *

12,863 Q. Is Santa Fe a member of the Southwestern Freight Bureau, Western Trunk Line Committee, and Transcontinental Freight Bureau? A. We are.

Q. I show you AWR Exhibit 263, which is headed "Southwestern Freight Bureau, Government Rate Submittal 1438," dated February 23, 1956, and 264, which is a communication from G. A. Moller to Freight Traffic Officers, Western Trunk Lines, dated February 24, 1956, and AWR 266 which is on the

stationery of the Transcontinental Freight Bureau, signed "M. F. Edbrooke," dated April 19, 1956, and ask you if those are the proposals to which you referred? A. Yes, they are.

MR. FLYNN: I offer those, Your Honor.

THE COURT: They may be admitted.

12,864 (Thereupon letter 2-23-56, signed W. F. Knobeloch, Chairman, on letterhead of Southwestern Freight Bureau, St. Louis, Mo., "Government rate submittal 1438, marked Defendant 2 (AWR) Exhibit 263 for identification, received in evidence.)

(Thereupon letter 2-24-56, G. A. Moller to Freight Traffic Officers, Western Trunk Lines, marked Defendant No. 2 (AWR) Exhibit No. 264 for identification was received in evidence.)

(Thereupon letter 4-19-56, on stationery of Transcontinental Freight Bureau, signed "M. F. Edbrooke" marked for identification Defendant 2 (AWR) Exhibit No. 266, was received in evidence.)

BY MR. FLYNN:

Q. Were the same rate bases proposed in each of those three Rate Bureaus? A. Yes, they were.

Q. What was that?

A. Class 45, carload minimum weight 40,000 pounds, and for weight in excess of 40,000 pounds, loaded in the same car, 80 per cent of Class 45.

Q. In what area? Was the proposal made in the Southwestern Freight Bureau limited to a particular area?

A. To and within Southwestern Territory -- from, to and within.

12,865 Q. Is there a further limitation?

A. Perhaps you are speaking of Docket 2300 rates.

Q. 2300 -- 28300.

A. 28300 class rates. In other words, the Class 45 was of the Docket 28300 class rates.

Q. Was there a similar provision in the proposal for the Western Trunk Line Committee? A. That's right.

Q. Did that limit the application of those proposals to something less than the entire territory of those Bureaus? A. Yes.

Q. What was the position of the Santa Fe with respect to those proposals?

A. We were opposed to all three of them.

Q. Was that decision based upon the belief that the proposed rates were non-compensatory? A. No, sir.

Q. Upon what factors was that decision based?

A. It was our judgment that to go below a Column 55 on the general basis of rates on ammunition and explosives was lower than necessary, and that we would unnecessarily reduce our total revenue on ammunition and explosives. We felt that Column 55 was a proper basis to apply generally on 12,866 ammunition and explosives and if we had to meet any specific situations where we had to go below Column 55, then we would do it in a point to point action.

Q. Was that decision based on the competitive conditions which faced the Santa Fe? A. Yes, sir.

Q. Did you consider the competitive conditions which affected other railroads in reaching your decision? A. No, we did not.

Q. I didn't hear your answer; I'm sorry. A. No, we did nbt.

Q. How was this proposal handled in the Southwestern Freight Bureau?

A. By mail vote.

Q. Did the Santa Fe vote? A. We did.

Q. What was your vote?

A. Opposed.

Q. What was the result of that vote?

A. By a majority vote the reduced rates were approved.

Q. How was it handled in the Western Trunk Line Committee?

A. At a meeting with the Western Trunk Line Committee, Freight Traffic Managers' meeting.

* * *

12,868 THE WITNESS: Read the entire exhibit?

MR. FLYNN: Yes, please. It is AWR Exhibit 265.

THE WITNESS: This is addressed to the Executive Officers, Western Trunk Lines. The subject is "Ammunition and explosives from, to and between WTL and SWFB Territory:"

"We are in receipt of the following letter, addressed to Chairman Knobeloch and me, from Mr. E. Rigg, Vice President, CRI&P Railroad, which is notice of independent action in connection with the above described subject:

" 'Referring to Mr. Knobeloch's circular letter of February 23, Government Rate Submittal 1438 (carrying expiration date of March 1, 1956 for replies) also Mr. Moller's circular letter of February 24, G-File 369-8-1610, listed for consideration at the March 1956 FTMC meeting.

" 'Both of these letters submit proposal for Emergency
12,869 consideration issuance of a Section 22 Quotation to the Army, Navy and Air Force on Ammunition, Explosives and Ordnance as described in the proposal.

" 'Anticipating negative action in the mail declaration on SWFB GRS 1438, please accept this as notice of our desire and intention and proceed to issue for our account Section 22 Quotation to Government Agencies addressed in EC-WTA Section 22 Quotation No. 76 on Ammunition, Explosives and Ordnance as described in appendix to submittals referred to above on basis of:

"Class 45, Docket 28300 Carload minimum weight 40,000 pounds. For weight in excess of 40,000 pounds loaded in the same car, apply rates on basis of (80 percent of Class 45, Docket 28300), subject to Ex Parte 175-C and Ex Parte 196, if and when same becomes effective.

"Fractions to be disposed of by dropping less than 1/2 cent and increasing 1/2 cent or more to the next higher full cent.

"Suggested basis to apply on interstate traffic from, to and between points on the CRI&P Ry. We are also willing to join our connections on the same basis via class rate routes, grouping to be per National Rate Basis Tariff No. 1, and sub-
12,870 ject to the conditions outlined in EC-WTA Section 22 Quotation No. 76.

" 'Quotation should be made effective March 1, 1956.

" 'You are requested to immediately wire Mr. O. E. Schultz, Chairman, OFTC-Eastern Railroads, for concurrence of Eastern Lines, which should be promptly forthcoming in view of the same basis being applicable within Eastern Territory as indicated by TEA-ER in Section 22 Quotation A-1706-A.

" 'As indicated, the quotation should be made effective March 1, for application from, to and between points on the CRI&P and the balance should be made effective at the earliest possible date that concurrence will permit.' "

"For information. Arrangements will be made for issuance of Section 22 Quotation accordingly."

Signed "Yours truly,

"G. A. Moller."

Q. Did you attend the meeting of the Western Trunk Line Committee at which that rate proposal was considered? A. No, sir.

Q. Did you instruct the Santa Fe's representative at that meeting how he was to vote on that proposal? A. We did.

12,871 Q. What were those instructions? A. To oppose it.

Q. In view of the fact that the Rock Island had given independent notice, why did you continue to oppose the reduction?

A. We hoped that the other railroads wouldn't do the same thing.

Q. What was the result? What was the vote at that meeting?

A. They adopted it by a majority vote.

Q. Did the rates that were approved in that meeting, the Western Trunk Line Committee, and the rates that were approved in the meeting of the South-

western Freight Bureau, become effective for the Santa Fe?

A. Yes, they did.

* * *

12,874 Q. What action did the Santa Fe take with respect to the proposal to make a further general reduction on Transcontinental movements of Ammunition and Explosives?

A. We were opposed to it.

Q. Did you notify the Transcontinental Freight Bureau of your opposition? A. We certainly did.

Q. What was the effect of that notice?

A. That notice was to elicit something for the discussion at the Transcontinental Freight Traffic Managers' meeting.

12,875 Q. I show you AWR Exhibit 267 which is on the stationery of the Transcontinental Freight Bureau, dated April 23, 1956, signed "M. F. Edbrooke".

Is that the communication which placed that subject on the docket of the Transcontinental Bureau for consideration at a meeting? A. Yes, it was.

MR. FLYNN: I offer that document.

* * *

THE COURT: It may be admitted.

(Thereupon letter 4-23-56, on letterhead of Transcontinental Freight Bureau, signed "M. F. Edbrooke" marked Defendant No. 2 (AWR) Exhibit 267 for identification was received in evidence.)

BY MR. FLYNN:

Q. Were the Santa Fe representatives at that meeting?

A. Yes, sir, they were.

Q. Did they vote on the proposal? A. Yes, sir.

Q. What was their vote?

12,876 A. "No" -- opposition.

Q. What was the result of the vote taken at the Transcontinental Freight Bureau meeting? A. It lost.

Q. By that you mean the proposal was defeated? A. Defeated, yes.

Q. And the rates were not made effective? A. Right.

Q. Has a general rate reduction in the transportation of ammunition and explosives been made in the area west of the black line on the map, AWR Exhibit 242, at any time since October, 1955?

A. On a general basis, no.

Q. Has a general reduction in ammunition and explosives rates been made for transcontinental movements in the period subsequent to October 20, 1955? A. No, sir.

Q. Have point to point reductions been made in the area west of that line? A. Yes.

Q. Have point to point reductions been made on transcontinental traffic? A. Yes, sir.

Q. Have point to point reductions been made in the area east of the line where the rates did become effective?

12,877 A. Yes, they have, to meet the competition.

* * *

DIRECT EXAMINATION OF A. S. LARSON

BY MR. FLYNN:

12,918 Q. Will you tell us what basis of rates the Missouri Pacific proposed?

12,919 A. The Missouri Pacific proposed rates on ammunition and explosives on a basis of class 45 of the ICC Docket 28300 first class rates, minimum weight 40,000 pounds, and 80 percent of that rate on the weight over 40,000 pounds in the same car.

Q. Was that rate basis in effect in any part of Docket 28300 Territory at that time?

A. At that time, it was generally applicable within Eastern Territory.

Q. Mr. Larson, was that proposal to establish the rate basis you described in all of Western Trunk Line Territory?

A. No, not all of Western Trunk Line Territory, only to that portion embraced in the 28300 Territory.

Q. And that would be the portion east of the line, the black line on AWR Exhibit 58? A. That's true.

Q. And that would be something less than in all of Western Trunk Line Territory? A. That's right.

Q. Is that kind of a geographic limitation to Docket 28300 Territory unusual?

A. It is not unusual. We have established exceptional ratings related to the 28300 on numerous commodities, for commercial movements, such as agricultural implements, iron and steel, canned goods -- so it is not unusual.
12,920 Q. I take it then, there is no requirement that the Western Trunk Line Committee make the same rate throughout its territory?

A. That is true.

Q. Does the party making a proposal for a rate reduction usually offer justification for the proposed rates?

A. They usually do.

Q. Did the Missouri Pacific do so? A. They did.

Q. Is that justification set forth in the proposal itself in evidence as AWR Exhibit 270, a letter you have before you? A. It is.

Q. Will you read me that part of the letter, please? A. All right.

"The basis of rates herein suggested has already been quoted to the Government by the Eastern Lines for general application within that territory.

"It is also the same as recently quoted in several individual instances for application within the Western Territory.

"Quotation of this basis of rates for general application within the Western Territory will undoubtedly place the western rail lines in a better position to effectively compete for the movement of the
12,921 traffic in question."

Q. Mr. Larson, considering the fact that the basis of rates for Government shipments of ammunition and explosives prevailing when you received that letter was 55 percent of the old first class rates, was there anything unusual

about the magnitude of the reduction which the Missouri Pacific was proposing?

A. No, I don't think there was anything unusual in reducing from class 55 to 17,000 Part 2, to 45 with the 28300 scales.

Q. You had other reductions of similar magnitude?

A. Offhand, I would say we had many reductions of greater magnitude than that.

Q. Did any member of the Western Trunk Line Committee take any action with respect to that proposal prior to your scheduled meeting?

A. Yes, there was.

Q. Tell us what railroad that was.

A. Under date of February 29, 1956, we received a letter from Mr. E. Rigg, E. R-i-g-g, Vice President of the CROI&P --

Q. Mr. Larson, would you give the name of that rather than the initials? The name of the railroad rather than the initials.

A. All right. Chicago, Rock Island, and Pacific Railway.

* * *

12,922 Q. What was the action taken by the Rock Island?

A. The Rock Island served notice of independent action, stating it was their desire to have the proposed basis, namely, class 45, with the 80 percent incentive basis, be made applicable for their account on traffic to or from points on the Chicago, Rock Island and Pacific and, further, that they were agreeable to joining with any other carriers who might desire to join them.

Q. Mr. Larson, I show you AWR Exhibit 271 for identification, on the stationery of the Chicago, Rock Island and the Pacific Railroad Company, dated February 29, 1956, addressed to W. F. Knobeloch, Chairman, Southwestern Freight Bureau, and G. A. Moller, Chairman, Western Trunk Line Committee, and signed E. Rigg, and ask you if that is the letter of the Rock Island to which you referred?

MR. BALL: I wonder if the reporter has Knobeloch spelled correctly.

THE WITNESS: Knobelock is spelled K-n-o-b-e-l-o-c-h.

BY MR. FLYNN:

Q. Is that the letter, Mr. Larson? A. It is.

12,923 MR. FLYNN: I offer AWR Exhibit 271.

THE COURT: Any objection? It will be received.

(AWR Exhibit No. 271 for identification received in evidence.)

BY MR. FLYNN:

Q. Did any other railroad take similar action? A. Yes.

Q. What railroad was that?

A. We also received a letter from H. L. Schaeffer of the Missouri Pacific Lines, serving independent notice, stating their desire to have the same basis established for their account.

Q. I show you what has been marked AWR Exhibit 272, on the stationery of the Missouri Pacific Lines, dated March 5, 1956, addressed to Mr. Moller, and signed H. L. Schaeffer, and ask you if that -- to Mr. Moller and a copy to Mr. Knobeloch, signed H. L. Schaeffer. Is that the letter to which you referred?

A. It is.

MR. FLYNN: Now, Your Honor, I think that the text of 271 was read on Thursday, but I would like to have the witness read 272.

THE COURT: He may read it.

THE WITNESS: This is on the letterhead of the Missouri Pacific Lines, dated March 5, 1956, addressed to Mr. Moller.

* * *

12,924 THE WITNESS: Dear Mr. Moller: Your letter February 24 reproduces our joint submittal of February 21 to Chairman Knobeloch and you and lists for consideration at meeting of the Freight Traffic Managers Committee convening this week matter of Section 22 quotation on ammunition and explosives to, from, and within Western Territory.

The Southwestern Lines approved this proposition on mail vote and in pursuance thereto, Chairman Knobeloch issued his --

MR. FLYNN: GRQ.

THE WITNESS: GRQ No. 1798, effective March 1. We desire the same procedure observed for our account in the Western Trunk Line Committee

effective on the same date. Please so arrange.

12,925 BY MR. FLYNN:

Q. Now, what did your articles require you to do about such notices?

A. Our articles under the 5A Agreement would require us to arrange for the issuance of a Section 22 quotation for the notice-giving lines regardless of what action may have been taken by the Freight Traffic Managers Committee.

Q. Was your meeting, scheduled meeting held on March 6, 1956?

A. It was.

Q. What railroads were represented at that meeting?

A. Well, may I read from a list of the representation at that meeting?

Q. Do you have the list with you?

THE COURT: What meeting was this, Mr. Larson?

THE WITNESS: March 6, our regular Freight Traffic Managers meeting.

THE COURT: 1956?

THE WITNESS: Yes.

BY MR. FLYNN:

Q. Why don't you just read the names of the railroads, Mr. Larson?

A. The AT&SF --

Q. Would you please give the names --

12,926 A. All right.

Q. -- because not all of us remember the initials, as well as you can.

A. All right. The Atchison, Topeka and Santa Fe Railway; Chicago and Eastern Illinois Railroad; Chicago and Illinois Midland Railroad; Chicago and North Western Railroad; Chicago, Burlington and Quincy Railroad; Chicago, Great Western Railroad; Chicago, Milwaukee, St. Paul and Pacific Railroad; Chicago, North Shore and Milwaukee Railroad; Chicago, Rock Island, and Pacific Railroad; Chicago, St. Paul, Minneapolis and Ohio Railroad; Duluth, South Shore, and Atlantic Railroad; Elgin, Joliet, and Eastern Railroad; Gulf, Mobile and Ohio Railroad; Illinois Central Railroad; Illinois Terminal Railroad; Kansas City, Southern Railroad; Litchfield and Madison Railroad; Minneapolis and St. Louis

Railroad; Minneapolis, St. Paul and Sault Ste. Marie Railroad; Missouri, Kansas and Texas Railroad; Missouri Pacific Railroad; St. Louis-San Francisco Railroad; Toledo, Peoria and Western Railroad; Wabash Railroad; and the Union Pacific Railroad.

There was also in attendance at that meeting a representative of the American Short Lines, but they do not have any vote.

Q. Do all of the railroads which you named have a vote?

A. They do.

Q. How many were at that meeting?

12,927 A. 26 member lines.

Q. Who presided at that meeting, Mr. Larson? A. I did.

Q. Do you usually preside at the Freight Traffic Managers Committee meetings? A. I do.

Q. How long did that meeting last?

A. That meeting lasted 7 days.

Q. Were the Missouri Pacific proposals the only matter that came before that meeting?

A. No, At this particular meeting, we had 187 subjects for consideration.

12,928 BY MR. FLYNN:

Q. How many of those subjects involved Section 22 rates to the Government? A. As I recall it there were five or six.

Q. How much of your seven days was spent on the Missouri-Pacific's proposal for reduction on the basis of ammunition and explosives rates?

A. Well, I cannot give you the exact time. But I am sure it was less than one hour.

Q. How does the Freight Traffic Manager's Committee decide what action should be taken by the Western Trunk Line Committee on a rate proposal?

A. Well, following a discussion, a motion is usually offered and votes are taken. The action is governed by the majority, in most cases.

Q. The majority of the members? A. Present.

Q. Of the members present? A. Yes.

Q. Was the vote taken on the Missouri Pacific's proposal?

A. There was.

Q. What was the outcome of that vote?

A. The motion for approval of the proposal was offered and was approved by majority vote.

12,929 Q. Can you tell us how each of the 27 railroads represented at that meeting voted? A. I can not.

Q. Why not?

A. Because we have an electronic device, I should say, a voting machine, at each member's desk, underneath there is a yes and a no button. After a motion is made, the Presiding Officer will ask, "Are you finished with your discussion, and if so, please let me have your votes."

So, the member will push a yes or no button. When they have done that, the Presiding Officer has a little board right at the head of the desk, and there is a button saying "Count votes." You push that button by the electronics, the votes are computed, the noes and the yeses. I had no way of knowing who voted or how they voted. Merely the totals are shown on this board.

Q. The total yeses and total noes. A. That is right.

Q. Do you keep a record of the number of yes votes with the number of no votes on each proposal? A. We do not.

Q. Do you recall what the vote was on the Missouri Pacific's proposal?

A. I do not.

Q. Do you recall whether or not there were any negative votes?

12,930 A. There were some negative votes.

Q. What action did you take as a result of the affirmative vote in the Freight Traffic Manager's Committee meeting?

A. Well, the record that was adopted by the Freight Traffic Manager's Committee did require concurrence of other jurisdictions.

Q. Why was that, Mr. Larson?

A. On interterritorial traffic we must get the concurrence of other jurisdictions if they want to participate through the 28, 300 territory.

Q. Was the proposal that was adopted to apply to more than just the Western Trunklines, that portion of the Western Trunkline committee you have just described?

A. The proposal contemplated from, to and between points in Western Trunkline territory, and Southwestern Freight Bureau Territory. The practical application would cover all of 28, 300 territory as shown on that map. That would include Eastern Lines Territory, Southern Lines Territory, or Southern Freight Association territory.

Q. Now, you could not make it applicable to every place shown east of this line, AWR exhibit 58 just by taking action on the Western Trunkline Committee, could you? A. No.

12, 931 Q. What was necessary?

A. It was necessary to submit our record to the other Associations or Bureaus for their concurrence.

Q. Was that done? A. It was done.

Q. How was that done?

A. By letter addressed to the Chairman, Chairman Knobeloch, Chairman Hill of the Eastern Lines, with copies to Chairman Raasch.

Q. Who is he?

A. Chairman of the Illinois Freight Association and also to Mr. Paul Walsh, Chairman of the North Lines Committee at that time, requesting that they furnish their concurrence.

Q. Did you send it to anybody else besides the TEA, Southwestern Freight Bureau, Illinois Freight and Northern Lines?

A. Well, we advised the government agencies by wire, is that what you had in mind?

Q. Did you advise the Southern Freight Association? A. Yes, sir. Did I miss Mr. Kerr?

Q. Mr. Larson, I show you a letter dated March 7, 1956, on the

stationery of the Western Trunkline Committee, which is addressed to Mr. Knobeloch and to Mr. Hill, with copies to Mr. Kerr, Mr. Raash, Mr. Walsh, Mr. Barron, Mr. Leonard Hill, Mr. Lindsay and Mr. McMahan, signed
12,932 G. A. Moller. It has been marked AWR exhibit 273. I ask you if that is the letter which you have just referred to?

A. That is the letter.

MR. FLYNN: I offer AWR exhibit 273, your Honor.

THE COURT: Any objection?

MR. WRIGHT: No objection.

THE COURT: It will be received without objection.

(No. 2 Defendant AWR Exhibit 273 Letter on Western Trunkline Committee Letterhead dated 3-7-56 to Messrs. Knobeloch and Hill, was received in evidence.)

BY MR. FLYNN:

Q. Read that, please. That is dated May 7, 1956.

A. That is addressed to Mr. W. F. Knobeloch, Chairman of the Southwestern Freight Bureau and to Mr. E. V. Hill, Chairman of the Traffic Executive Association Eastern Railroads, with copies to Messrs. Kerr, Raasch, Walsh, Barron, Hill, Lindsay and McMahan. It reads:

"Gentlemen:

This will confirm telephone conversations March 6, 1956, between Mr. Lyman of this office and Mr. Knobeloch and Mr. Bracken regarding Section 22 Quotations on Ammunition, Explosives and Ordnance.

"At the March, 1956 Meeting of the Western Trunk Lines Freight Traffic Managers' Committee there was approved Class 45
12,933 (ICC 28300) minimum weight 40,000 pounds and 80 percent of Class 45 (28300) on weight in excess of 40,000 pounds loaded in the same car, on ammunition, explosives and Ordnance, to, from and between Western Trunk Line Territory (Except Northern Lines

Territory); also between Illinois and Southwestern Freight Bureau Territories, effective March 1, 1956, subject to concurrence of other jurisdictions. Further, to proceed with issuance of Section 22 Quotation to the extent concurrences will permit and outstanding quotations on a higher basis to be canceled."

MR. BALL: I am merely suggesting to the reporter that he is reading an exhibit and she need not copy it.

THE COURT: I see. You do not have to copy what he is reading. All right. Thank you.

BY MR. FLYNN:

Q. Go ahead, please.

A. (Continuing to read.)

"This office telegraphed the above record to the Department of the Army, Air Force and Navy and the Marine Corps.

"This office has furnished Mr. Knobeloch, WTL Section 22 quotation No. 1241 to use on the Quotation to apply within the
12,934 Southwest; and between Southwestern and Western Trunk Line, Illinois and Official territories."

Q. Mr. Larson, were there then two quotations?

A. Yes, Mr. Knobeloch issued a quotation for application within his own territory and between Southwest and Western Trunklines, too.

Q. Then where was another quotation issued by Western Trunk Lines?

A. That is right. We issued a quotation for application within our own territory No. 1242.

Q. Go ahead.

A. (Reading)

"This office is issuing today, effective March 1, 1956, Joint Section 22 Quotation WTL No. 1242; TEA-ER No. A-1840, applying"--

Q. That is the second one?

A. That is right. "TEA-ER No. 1840 applying within Western Trunk Line territory (Except Northern Lines territory; between Northern Illinois, Southern Wisconsin, Extended Zone C in Wisconsin and the balance of Official Territory; also between Western Trunk Line Territory (except Northern Lines territory) and official Territory. Copies of this letter are being furnished to Mr. J. G. Kerr, Chairman Southern Freight Association;
12,935 Mr. R. G. Raasch, Chairman, Illinois Freight Association and Mr. P. A. Walsh, Chairman, Northern Lines Committee, with the request that they advise their concurrence in the above record, as soon as possible.

"Yours truly,

"G. A. Moller."

Q. That is the usual procedure for quotations which are to apply from and to Western Trunkline Territory?

A. That is the usual procedure.

Q. I notice you sent it to the TEA, the Southern Freight Association and Illinois Freight Association, I think are described here as rate bureaus with their own 5-A Agreements. Isn't the Northern Lines Committee a part of the Western Trunk Lines Committee?

A. Territorially, the Northern Lines Committee is within Western Trunkline Territory. However, as I pointed out before, under the 5-A agreement the Northern Lines Committee has been granted autonomous jurisdiction in connection with rates within Northern Lines Territory from and to points within Northern Lines Territory.

Q. In other words--well, can the Western Trunkline Committee take action with respect to rates affecting Northern Lines Territory without action by the Northern Lines Committee? A. They can not.

12,936 Q. Now, Mr. Larson, I hand you a copy of AWR exhibit 239, the articles of Western Traffic Association. Will you tell me who the members

are of the Northern Lines Committee?

A. The members of the Northern Lines Committee are, Canadian National Railway Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Duluth, Missabe and Iron Range Railway Company, Duluth, Winnipeg and Pacific Railway Company, Great Northern Railway Company, Minneapolis, St. Paul & Sault, Ste. Marie Railroad Company and Northern Pacific Railway Company.

Q. Is that shown in AWR Exhibit 239? Are those names shown? A. It is.

Q. Give us the page for future reference. A. Page 76.

Q. Thank you. A. Names of the Northern Line Committee.

Q. Now, did you receive concurrences from other jurisdictions as a result of your March 7th letter?

A. We received concurrences from other jurisdictions other than the Northern Lines Committee.

Q. What action did the Northern Lines Committee take?

12,937 A. We were advised by letter dated March 16th that the Northern Lines, non-concurred in the Western Trunkline rate.

Q. By that you mean they did not want those rates? A. That is ture.

Q. I show you what has been marked AWR exhibit 274 which is on the stationery marked Northern Lines Committee, dated March 16, 1956, addressed to Mr. Moller and Mr. Knobeloch and signed P. A. Walsh, Chairman. I ask you if that is the letter to which you have just referred?

A. That is the letter.

Q. Would you read the effective paragraph of that, that tells you what is to be done?

A. "This proposal received consideration at the March meeting of the Northern Lines Committee under Northern Lines Committee Docket 3767 and record of the meeting was that the proposal be

not approved in so far as the application to and/or from Northern Lines Territory is involved."

So, we speak of that accordingly.

* * *

DIRECT EXAMINATION OF MR. PEEL

BY MR. FLYNN:

* * *

12,966 Q. Did the Southwestern Freight Bureau receive the Missouri Pacific Proposal for a change in ammunition and explosives rates concerning which Mr. Larson testified? A. Yes, sir.

Q. What was done with that proposal?

A. Mr. Knobeloch was then Chairman of our organization. He immediately submitted it in the form of a government rate submittal to our member lines for an expression of view.

Q. I show you AWR exhibit 263, is that the submittal to which you referred? A. Yes, sir.

MR. FLYNN: I believe that has already been read, your Honor.

12,967 THE COURT: Very well.

BY MR. FLYNN:

Q. That called for a mail vote? A. Yes, sir.

Q. Was any action other than the casting of a vote taken by any of the members of the Southwestern Freight Bureau? A. Yes, sir.

Q. What was that?

A. Just prior to the expiration of the March 1st, 1956 reply date on this submittal, we received from Mr. E. Rigg, he was then vice president of the Chicago, Rock Island and Pacific Railroad - an announcement of his intention to establish between points on his railroad and a present willingness to join with any one else that would concur on the same basis as we had in our submittal.

Q. That is the same independent notice concerning which Mr. Larson testified? A. Yes, sir.

Q. Any other railroad take that action of Southwestern Bureau?

A. It was immediately followed by a notice of Mr. R. C. Trovillion. He was the Assistant Vice President at the time I believe, of the Missouri, Kansas, Texas lines. He filed a similar notice.

12,968 Q. That was by letter? A. Yes, sir.

MR. FLYNN: Please mark this for identification with the next number.

DEPUTY CLERK: No. 2 defendant AWR exhibit 276 for identification.

(Letter from Missouri-Kansas-Texas Lines, St. Louis. Mo. dated March 1, 1956 signed by R. C. Trovillion, to Mr. Knobeloch, Southwestern Freight Bureau is marked Defendant AWR 276 for identification.)

BY MR. FLYNN:

Q. I show you a letter dated March 1, 1956 on the stationery of the Missouri-Kansas-Texas lines, addressed to Mr. W. F. Knobeloch, Chairman of the Southwest Freight Bureau, signed R. C. Trovillion, and ask you if that is the letter to which you refer? A. Yes, sir.

MR. FLYNN: I offer the letter.

THE COURT: Received.

(Defendant exhibit 276 is received in evidence.)

BY MR. FLYNN:

Q. Please read that.

A. It is on the letterhead of Missouri-Kansas-Texas lines, dated March 1, 1956, at St. Louis, Missouri, addressed to Mr. W. F. Knobeloch, Chairman of the Southwestern Freight Bureau, St. Louis, Missouri.

12,969 "Dear Sir:

"Referring to your Government Rate Submittal 1438, contemplating issuance of Section 22 quotation, Class 45, on ammunition and explosives, from, to and within Southwestern

Territory.

"This letter will serve as our notice, under Article 3 of the Articles of Organization and Procedure in Western Traffic Association, of our desire and intention to quote the Department of Defense the following for application from, to and between points on the M-K-T lines:

"Class 45, Docket 28300, carload minimum weight 40,000 pounds.

"For weight in excess of 40,000 pounds loaded in the same car apply rates on basis of eighty (80) per cent of Class 45, Docket 28300.

"The above basis is to be subject to Ex Parte 175 and 196 increases and fractions to be disposed of by dropping less than one-half cent and increasing one-half cent or more to the next higher full cent.

"This is also to serve as notice of our intention to join other lines filing similar notices and other Associations who approve thissame basis."

12,970 He sent a copy of this to Mr. J. A. Moller, who was then Chairman of Western Trunkline Committee at Chicago.

Q. Under your Articles, what was the effect of the notice given by the Rock Island and the M-K-T?

A. Whey, we would immediately issue government rate quotations in line with their independent notices.

Q. Did Mr. Trovillion agree to postpone the action to be taken on behalf of the M-K-T? A. Yes, sir.

Q. Is that reflected on the letter from which you have just been reading? A. Yes, sir.

Q. Will you read that, please?

A. This is a memorandum that was placed on this letter by Mr. Knobeloch, stating - "Mr. Trovillion phoned stating he is willing to hold

this up until noon today to see results of handling GRS 1438."

That was his reference to our government rate submittal.

That was signed "WFK" on the second of March, 1956.

Q. Were mail votes received on the Missouri-Pacific proposal?

A. Yes, sir.

12,971 Q. What was the result of that vote?

A. The great majority of the lines voted in favor of it.

Q. Can you tell us how the individual members voted?

A. If I am permitted to read from notes? Will that be all right?

Q. What were the notes from, what were they made from?

A. They were made from records in our files.

MR. FLYNN: Any objection?

MR. WRIGHT: Well--

THE COURT: Were these made from the record in the file?

THE WITNESS: Yes.

THE COURT: Any objection?

MR. WRIGHT: No, I think not, as long as we know what the records are.

THE COURT: Just tell us what the record was made from.

THE WITNESS: Well, it is our file, of course, on this particular subject. It is our bureau file.

THE COURT: All right.

MR. FLYNN: Would you slow down, because I would like to write it down sir.

12,972 THE WITNESS: Yes, sir.

BY MR. FLYNN:

Q. Let me put out here "Vote on GRS 1438."

A. GRS 1438. Yes, that is right.

Q. Southwestern Freight. A. Yes, sir.

Q. And the rates proposed there were 45 per cent first class.

A. Docket 28300 first class.

Q. That was what, 40,000 pounds.

A. 40,000 pound minimum weight.

Q. And 80 per cent of 45 per cent first class, docket 28,300, on what?

A. On the weight in excess of 40,000 pounds loaded in the same car.

Q. Now, what was the date on which those votes were to be received?

A. March 1, 1956.

Q. What is the date on the proposal--the submittal?

A. February 23, 1956.

Q. Tell me what railroads voted in favor of that proposal?

A. Kansas City Southern.

Q. All right.

A. The M-K-T.

THE COURT: What does that stand for?

12,973 A. Missouri-Kansas-Texas Lines.

Q. Go ahead.

A. The St. Louis, San Francisco.

Q. Yes.

A. The Missouri Pacific. The Chicago, Rock Island and Pacific. Texas and Pacific.

Q. Any others?

A. The Kansas, Oklahoma and Gulf, and Midland Valley, that is one system.

Q. Did they have one vote? A. Yes.

Q. Any others?

A. That is the list in favor of the proposal.

Q. How about what railroads voted against the proposal?

A. The only objection that we received was from the Sante Fe system.

THE COURT: What was that one?

THE WITNESS: The Santa Fe, yes.

THE COURT: The Santa Fe?

THE WITNESS: Yes, sir.

BY MR. FLYNN:

Q. That is Atchison, Topeka and Santa Fe? A. Yes, sir.

Q. Now, does this reflect all of the members of the Southwestern Freight Bureau who were entitled to vote?

12,974 A. No, sir.

Q. What about the others?

A. Well, they never expressed themselves one way or the other.

Q. They did not vote?

A. That is right.

Q. Let us see who they were.

A. Well, you have the Southern Pacific. Its subsidiary in our territory is the Texas and New Orleans.

Q. The S. P. & T & O, Texas and New Orleans, has one vote between them or what?

A. Just one vote. The Illinois Central.

Q. All right.

A. The Arkansas and Louisiana, Missouri.

Q. That would be A and L? A. Yes.

Q. Go ahead.

A. the Texas-Mexican.

Q. Is that a hyphenated word?

A. Yes, sir. Then the two subsidiary lines are the Burlington System: The Colorado and Southern and the Fort Worth and Denver. They have one vote.

Q. And one vote between them? A. Yes, sir.

12,975 Q. Do we now have the action taken by all of the voting members? That is, of the Southwestern Freight Bureau? A. Yes, sir.

MR. FLYNN: I ask to have marked with the next AWR number--

DEPUTY CLERK: Excuse me.

THE COURT: What does GRS mean?

THE WITNESS: It is an abbreviation for Government Rate Submittal.

THE COURT: Thank you.

DEPUTY CLERK: No. 2 defendant, AWR exhibit 277 for identification.

MR. FLYNN: 277 for identification is a chart showing the vote of the members of the Southwestern Freight Bureau on Government Rates Submittal 1438, submitted to the members of the Southwestern Freight Bureau on February 23, 1956. I would like to offer that.

THE COURT: It may be admitted.

(No. 2 defendant AWR exhibit 277 being a chart showing vote of members of Southern Freight Bureau on GRS 1438" was marked for identification and received in evidence.)

BY MR. FLYNN:

Q. Did the vote that was shown on AWR exhibit 277 result in approval of the proposal?

12,976 A. Yes, sir. I would like to refresh my memory here with this.

Q. By "this," you mean the 5-A agreement, AWR 239?

A. Yes, sir. I failed to mention the St. Louis, Southwestern Railroad, - Railway Company, as being one of the lines that did not express themselves on the proposal.

Q. They did not vote? A. Yes, sir.

Q. So that should be over in this column? A. Yes, sir.

Q. St. Louis Southwestern? A. Yes, sir.

Q. Now, then, we have six votes not cast, one vote opposed, and 7 in favor. A. Yes, sir.

Q. I believe you said that the decision was made by the majority of the votes cast? A. Yes, sir.

Q. What did you do as a result of the vote approving the submittal?

A. Well, the first thing we did was to advise Mr. Rigg and Mr. Trovillion that it would not be necessary to act on their independent notices for their account since we could issue a quotation for all of the member lines.

12,977 The next thing we did was to submit it to the Chairman of the other rate associations for their concurrence in our proposed basis.

Q. Did you receive such concurrences?

A. Yes, sir, in due course.

Q. And the rates that were established as a result of the action of Southwestern Freight Bureau and the subsequent concurrences of other jurisdictions remained unchanged? A. No, sir.

Q. What changes have been made, in general terms?

A. Well, we found it necessary on occasion to establish point-to-point rates that were lower than this general basis; and we also found it necessary to amend the quotation in a few instances, where we were faced with a disability in that our facilities did not reach the igloos or the storage places for the ammunition, and there was an element of cost getting it from there to our rail facility.

So, we took care of that by absorbing or reducing the rate that amount.

Q. That would be at those particular installations where such disability existed? A. That is right.

Q. Have point-to-point reductions other than by amendment to the main quotation been made in Southwestern Freight Bureau subsequent to April 1, 1956? A. Yes.

12,978 Q. Have you examined plaintiffs exhibit 219 and 219A through L, the rate study on Section 22 quotations? A. Yes, sir.

Q. Are those point-to-point reductions reflected in those exhibits? A. Yes, sir.

* * *

DIRECT EXAMINATION OF MR. BUTLER

BY MR. FLYNN:

* * *

12,984 Q. In 1955 were you advised that the military had requested the railroads to negotiate with respect to such rates? A. I was.

Q. How were you advised of that?

A. I was advised, as other members of the Executive Committee of the Western Traffic Association were, by Mr. H. C. Barron, our then Chairman and General Counsel of the Executive Committee, in a letter which he addressed to the membership.

Q. I show you AWR Exhibit 257. Is that the letter to which you refer? A. It is.

Q. What was the date of that letter?

12,985 A. February 21, 1955.

MR. FLYNN: That was read on Thursday, Your Honor.

BY MR. FLYNN:

Q. Mr. Butler, in that letter Mr. Barron states that he had conferred with lawyers handling the Reparations cases, and that it was their advice that no commitment be made for a general reduction in rates on ammunition and explosives until the Reparations cases had been completed. Are you familiar with that? A. Yes.

Q. Was that the position of the Missouri Pacific?

A. Well, it was the position of the Legal Department of the Missouri Pacific, but it was not the position of the Traffic Department.

When we received Chairman Barron's letter we addressed Mr. Toll R. Ware, our commerce attorney --

Q. How do you spell that name?

A. T O L L (spelling) for "Toll" and "R" as the initial, and W-A-R-E (spelling) for "Ware."

Q. Thank you.

A. We requested his advice with respect to a general revision,

what effect it might have upon the Reparations cases.

He expressed the view that a general adjustment might have an ad-
12,986 verse effect but that since we were endeavoring to adjust our rates to keep us on a more competitive basis as a matter of policy, it was a question of policy which we should decide.

Q. So the decision was left to the Traffic Department? A. Yes.

Q. And what conclusion did the Traffic Department reach?

A. We reached the conclusion that we should adjust our rates to the extent necessary to remain competitive regardless of the effect it might have upon the Reparations cases.

Q. And in the last paragraph of his letter, Mr. Barron recommended that there be no negotiations with the military with respect to these rates.

Did you agree with that position?

A. No, I did not agree with it because we always feel that we should negotiate with any of our patrons, be it the Governmental Agencies or any other shipper, if they want to talk about rates.

Q. Was there any particular reason for negotiating with respect to these rates at that time?

A. Yes. Our traffic was rapidly declining in so far as explosives and ammunition was concerned, and we felt some adjustment would be necessary
12,987 in our rate structure.

Q. Do you have the figures for the ammunition and explosives traffic which you transported during 1954?

A. I have the figures in so far as the traffic which originated on my railroad is concerned.

Q. How are those figures broken down?

A. I have them broken down by quarters, in '53 and '54 and '55.

Q. Are those the same figures which you report to the Interstate Commerce Commission?

A. Yes; under what we call QCS reports, which is Quarterly

Commodities Statistics.

Q. You say these are figures which show the traffic originating on the Missouri Pacific?

A. Yes, originating at installations on our lines, or Air Force Bases, or some other base on our railroad.

Q. How are these figures expressed?

A. They were expressed in tons of 2,000 pounds.

Q. And you say that they are by quarters? A. By quarters.

Q. Would you tell me how many tons you originated in the first quarter of 1954? A. 20,217.

Q. How about the second quarter? A. 17,789.

12,988 Q. And the third? A. 10,099.

Q. How about the fourth? A. 10,403.

Q. Had the Missouri Pacific taken any action to meet motor carrier rate competition during the year 1954?

A. Are you talking about on this particular traffic?

A. On ammunition and explosives traffic? A. Yes.

Q. What action was that?

A. We participated in point-to-point quotations of specific movements.

Q. Did you attend the May 26th, 1955, meeting, at which General Lasher and Col. Flanagan made the presentation on behalf of the Army? A. I did.

Q. Do you recall what the proposal was that they made for rate reduction?

A. Yes. They suggested 55 per cent of first class, 28300 first class, minimum 50,000 pounds, and 40 per cent of first class minimum 80,000 pounds.

Q. What was the position of the Missouri Pacific with respect to that proposal?

A. I thought the rates suggested were lower than necessary to enable

12,989 us to continue to participate in the ammunition and explosives traffic.

I also thought establishment of rates would result in too great a revenue reduction.

Q. Did you come to any conclusion as to whether or not any general reduction should be made?

A. Yes. I felt that some adjustment should be made, obviously, from the figures which are shown on the chart. Our traffic was declining to a certain extent, and something had to be done, in my judgment.

Q. In reaching that conclusion, were you influenced by the presentation made by General Lasher and Col. Flanagan?

A. That was one of the factors that influenced me, yes.

Q. Did they tell you anything you didn't know?

A. They probably didn't tell me anything I didn't know, but they had figures accumulated, which I could have had, but I never had had the opportunity of placing them all in one spot as they did. I probably knew everything that they gave me except I didn't have the information all in one spot -- except this:

They did indicate that this particular basis of rates that they had suggested would enable the railroads to handle more of the traffic than they otherwise would handle.

12,990 In other words, while our traffic was continually sliding downward, General Lasher and Col. Flanagan indicated that the basis of rates which they suggested would at least stop the downward trend in our traffic volume.

* * *

13,004 Q. Were transit privileges extended to government shipments of ammunitions and explosives as of the time of this letter, August, 1955?

A. Yes, sir.

Q. Was that an important factor in your traffic?

A. Yes, we felt it was, and quite a volume of our explosives and ammunition moved under transit privileges.

Q. Were you advised that there had been a change in the Military's

13,005 transportation policy with regard to the use of transit?

A. Yes, under the policy referred to by Mr. Hill in his letter, it was indicated that transit would not be nearly as effective in regaining traffic to the railroads as it had been heretofore. In other words, generally speaking the traffic men generally understood approximately 50 per cent of explosives or ammunition would move under some form of transit, by rail. I was informed, or was led to believe, that not more than fifteen per cent of the traffic would be subject to transit after the new decision of the Army, after they put out the new guide.

Q. That is the Transit Control Guide that is referred to in that letter?

A. Yes, the Transit Control book guide.

Q. If I understand you, it was your opinion that when that became effective, less ammunition and explosives could be shipped by rail for the purpose of obtaining transit privilege? A. Yes.

* * *

DIRECT EXAMINATION OF MR. BUTLER

BY MR. FLYNN:

13,045 Q. Mr. Butler, during the period from February 14, 1955, to March 6, 1956, did you discuss the military's proposal for reduced rates on ammunition and explosives with General Lasher or Colonel Flanagan, other than at the May 26th meeting?

A. I did on the occasion of my periodical visits to Washington.

Q. In the course of such discussions, did you form the conclusion that the Eastern basis of rates, 45 per cent of first class and the incentive basis on amounts of 40,000 pounds, was acceptable to the Army as a response to their proposal? A. I did.

13,046 Q. In those discussions were you ever promised any particular quantity of traffic if you granted either the military's proposal or Eastern basis of rates? A. No.

Q. Did you have any reason to believe that the adoption of that

basis of rates would eliminate motor carrier competition? A. No.

Q. Did you have any reason to believe that it would eliminate most of the competition? A. No.

Q. Upon what do you base those statements?

A. Well, based upon my many years' experience. I have never been successful in making any rate adjustment that would eliminate entirely all of your competition. Generally speaking, your competitor either will meet your rate situation if the traffic is desirable traffic.

Q. Did you receive any information while you were considering the proposals which indicated to you that a quotation of the 45 per cent rate and the incentive basis on the excess weight of over 40,000 pounds would effectively meet all of your motor carrier competition? A. I did not.

Q. Did you receive any information to the contrary?

A. Yes. I received reports from some of our general agents
13,047 that each territory where we have installations, that the basis with which we were considering and which we finally approved, would not return all of the business to the railroad.

MR. FLYNN: Will you mark this?

DEPUTY CLERK: No. 2 defendant, AWR exhibit 287 for identification.

(Letter dated 3-1-56 from Salina, Kansas, A. L. Webb, to Mr. William H. A. Turner is marked AWR exhibit 287.)

BY MR. FLYNN:

Q. Mr. Butler, I show you AWR exhibit 287 for identification which is headed Salina, Kansas, March 1, 1956, addressed to William H. A. Turner, signed A. L. Webb. It shows a copy to Mr. J. S. Smith.

Will you tell me who Mr. Webb is?

A. Mr. A. L. Webb was then and still is General Agent of the Missouri Pacific Railroad in Salina, Kansas.

Q. Who is Mr. Turner?

A. He is our traffic manager in charge of the Western Territory. In other words, he has supervision over sales and service and matters of that kind, in numerous agencies, including Salina, Kansas.

Mr. Webb reports to Mr. Turner.

Q. Who is Mr. Smith, sir?

A. He is our general freight traffic manager, having jurisdiction
13,048 over freight rates under the supervision of Mr. Schaeffer and me.

Q. So, Mr. Webb reports to Mr. Turner, who reports to Mr. Smith, who reports to you?

A. Mr. Turner reports to Mr. Smith the rates, and Mr. Smith, in turn, reports to me.

Mr. Turner reports to Mr. Rebeck as to sales. Mr. Smith as to rates. They both report to me.

Q. Was this letter brought to your attention at the time it was received in St. Louis?

A. Yes. It was called to my attention. Mr. Smith called it to my attention upon the day it was received in his office.

Q. Do you recall what day that was?

A. About March 5, as I recall it.

Q. That was the day that you took independent action?

A. In Western Trunkline territory. And, by the way, Salina, Kansas is located in Western Trunkline Territory.

MR. FLYNN: I offer this letter, not for the truth of the statements therein, but for showing the information that Mr. Butler had at the time he was making his decisions with respect to these matters.

THE COURT: Any objection?

MR. WRIGHT: No objection.

13,049 THE COURT: It may be received.

(AWR exhibit No. 287 is received in evidence.)

MR. FLYNN: Mr. Hayes, would you like to read this one?

MR. HAYES: This is a letter, Exhibit 287, dated Saline, Kansas, March 1, 1956, marked "9088-SCL."

Addressed to Mr. William H. A. Turner.

"Mr. Wm. H. A. Turner:

"Referring to Mr. J. S. Smith's file C-WTA-1010-78, February 21st, addressed to Messrs. Knobeloch and Moller, Chairmen of the Southwestern Freight Bureau and the Western Trunk Line Committee respectively, regarding the issuance of a Section 22 quotation to the Departments of the Army, Navy and Air Force on ammunition, explosives and ordnance of Class 45, Docket 28300, carload minimum weight 40,000 pounds and for weight in excess of 40,000 pounds loaded in the same car, rates on a basis of 80 per cent of Class 45, Docket 28300.

"In discussing with Transportation Officer McEntire, Smoky Hill Air Force Base, Salina, we were advised that it was his opinion the requested rates would not secure the tonnage for the rail lines due to many of the bases not having trackage facilities
13,050 to their ammunition igloos.

"It was the Transportation Officer's thought that 80 per cent of Class 45 rates on 30,000 pounds loaded in the same car would justify the rail movement by compensating the shipper or the receiver for their drayage from the carriers team tracks to the igloos.

"This is given you as a matter of information.

"A. L. Webb."

It shows a "carbon copy to J. S. Smith."

BY MR. FLYNN:

Q. In proposing and supporting the rate reduction to the Class 45 and incentive basis, did you consider the competition offered by any specific motor carrier?

A. No, I did not. The fact of the matter is I did not know how much traffic any particular motor carrier was handling.

Q. Did you know whether or not Riss & Company was a principal competitor for traffic which could have been handled by the Missouri Pacific?

A. No, I did not know how much traffic Riss & Company were handling.

* * *

13,145 Q. Is the Union Pacific a member of the Executive Committee of the Western Traffic Association?

A. Yes, it is.

13,146 Q. Is it a member of the Western Trunk Line Committee?

A. Yes, sir.

Q. Is it a member of the Transcontinental Freight Bureau?

A. Yes, sir.

Q. Is it a member of the Southwestern Freight Bureau?

A. No, it is not.

Q. It is not a member of the Southwestern Freight Bureau?

A. It is not a member of the Southwestern Freight Bureau.

Q. During the period 1955 and 1956, Mr. Stilling, who represented the Union Pacific in meetings of the Executive Committee of the Western Traffic Association?

A. Mr. W. T. Burns frequently accompanied by Mr. K. G. Carlson.

Q. Is Mr. Burns still an employee of the Union Pacific?

A. No, he is not. Mr. Burns has retired under the company's pension plan.

Q. Is Mr. Carlson still in the employee of the Union Pacific?

A. Yes, he is.

Q. What is his position?

A. He is presently General Freight Traffic Manager.

13, 147 Q. Is he available to testify as a witness in this proceeding?

A. Well, unfortunately, he is not. Mr. Carlson is on duty but quite recently he had a session in the hospital and he is not released at present by the Doctor to do any extensive amount of traveling.

Q. Who represented the Union Pacific at the meetings of the Western Trunk Line Committee in 1955 and 1956?

A. Mr. Martin Holbrook. H-O-L-B-R-O-O-K (spelling).

Q. Is he still in the employ of the Union Pacific?

A. No, Mr. Holbrook retired about 60 days ago, after a rather severe heart attack, early in March of this year.

Q. Who represented the Union Pacific in meetings of the Transcontinental Freight Bureau?

A. Mr. C. C. Beech.

Q. Is he in the employ of the Union Pacific at the present time?

A. No, Mr. Beech is also retired under the company's pension plan.

Q. Mr. Stilling, have you appeared as a witness in other proceedings on behalf of the Union Pacific for the purpose of stating the position of the Union Pacific?

13, 148 A. Yes, I have. On one previous occasion in Federal District Court, and on many, many occasions in formal proceedings before the Interstate Commerce Commission.

Q. As a part of your duties, are you familiar with the practices and policies of the Union Pacific with regard to the actions of its representatives at meetings of the Rate Bureaus of which it is a member?

A. Yes, sir. It's necessary at all times that I be currently informed regarding the Union Pacific's position on important matters.

Q. Are those representatives instructed as to the position they should take at such meetings with respect to rate proposals, or are they permitted to exercise their own judgment?

A. They have a certain amount of freedom to exercise their own judgment but always subject to the general policy established by the Chief Traffic Officer.

Q. In the course of your duties as a Traffic Officer of the Union Pacific, are you required to become familiar with the instructions which govern those representatives?

A. Yes, sir.

Q. In the course of your duties were you aware that in 1955 the Defense Department requested the railroads to reduce the general basis of rates applicable to the transportation of ammunition and explosives throughout the United States?

13,149 A. Yes, I was.

Q. Were you aware that a proposal for such a reduction was presented to the Executive Committee of the Western Traffic Association?

A. Yes, sir.

Q. Did the Union Pacific Traffic Department adopt a policy with respect to that proposal?

A. No, it did not.

Q. What was the position of the Union Pacific with respect to that proposal?

A. The Union Pacific was opposed to it.

Q. I don't quite understand your answer, that you didn't have a policy. Wasn't opposition --

A. I'm sorry, perhaps I misunderstood your question.

We did have a policy, yes, sir, and that was in opposition to the request for the reduction in rates.

Q. And were you informed of that policy in the course of your duties at the time it was adopted?

A. Yes, sir, I was.

Q. Were you informed at the time that a meeting was to be held in Washington, D. C., in September, 1955, to consider the Department of Defense proposals for a general rate reduction on ammunition and explosives?

A. Yes, sir, we were informed of that meeting.

13,150 Q. Who represented the Union Pacific at that meeting?

A. The Union Pacific was not represented at that meeting.

Q. No one was there from the Union Pacific?

A. No, sir.

Q. Were you informed of the results of that meeting?

A. Yes, sir. As a member, we received a copy of the proceedings of that meeting.

Q. Did the Union Pacific approve the reduction of the basis of rates on

ammunition and explosives to 55 per cent of first class, minimum 60,000 pounds, adopted by Western Railroads at that meeting?

A. We were opposed to it, but we did later adopt it, yes, sir.

Q. If you were opposed to it, couldn't you have prevented it from becoming effective for the Union Pacific?

A. Yes, we could, of course. Surely.

Q. Why didn't you?

A. We would not thereafter have received any of the tonnage of explosives traffic had we maintained a higher basis of rates than other railroads. We were still interested in participating in the business, even at the lower basis of rates.

* * *

CERTAIN OF PLAINTIFF'S ADMISSIONS OF FACT READ BY MR. BALL:

* * *

13,160 "The policy of the Department of Defense was to award traffic to the carrier having the lowest rate and authorized by law to perform the transportation. In the absence of special considerations, such as shortage of equipment on the part of the carrier with the lowest rate, the existence of additional costs or charges, physical layout at point of origin or destination that made one type of carrier preferable, and need for delivery by a certain time.

"In such cases, the difference in rate was weighed against such special considerations."

No. 5 again on page 90.

"In instances where the over-all cost of transportation by rail and by truck was approximately equal, the policy of the Department of Defense was ordinarily to divide the traffic evenly between the two forms of transportation, to the extent that shipment in carload

13,161 and truckload quantities were involved -- In the absence of special consideration such as those referred to in the previous paragraph."

No. 6 on page 91:

"In instances where the cost of transportation by different rail carriers or different motor carriers was approximately equal as between such rail carriers or between such motor carriers, the

proportion of the traffic shipped by either of these two forms of transportation, under the policy described in the preceding paragraph, would be evenly divided between the carriers belonging to such class of carriers, in the absence of special considerations such as those referred to above.

No. 7 on page 91:

"Substantially all of the government rail traffic in ammunition and explosives, subsequent to the repeal effective October 1, 1946, of the statutory provisions concerning government traffic carried over land grant routes, moved under rate quotations made under Section 22 of the Interstate Commerce Act."

No. 9 on page 92:

"Section 22 was amended effective August 31, 1957, Public
13,162 Law 85-246, to require common carriers, subject to the Act, to file Section copies of all Section 22 tenders with the Interstate Commerce Commission."

* * *

Read by
13,169 MR. BALL: ***"There are many kinds of transit privileges. That is, storage en route, manufacturing en route, and so forth."

60. "In general, transit privileges result in the shipper paying a lower charge from the point of origin to the ultimate destination than the sum of the local rates from the point of origin to the intermediate point, at which the shipment stops and from the intermediate point to the ultimate destination."

17.

"A charge is imposed for the exercise of transit privileges."

18.

"Transit privileges have been frequently sanctioned by the rulings of the Interstate Commerce Commission."

* * *

13,170 MR. BALL: These are certain interrogatories that were addressed by the Western Railroads, and I will read the interrogatory and the answer. This is Interrogatory H-11.

"Does Riss contend that the quotations of Section 22 rates, of which it complains, were made with the specific intent to exclude Riss alone from the business of transporting explosives?

"Answer: No."

H-13.

"Does Riss contend that each railroad defendant participating in one or more of the Section 22 rate quotations, of which plaintiff complains, acted with the specific intent of eliminating

13,171 Riss as a competitor for explosives Traffic?

"Answer: No."

No. 10.

"If the answer to the preceding question is in the negative, state which, if any defendants are alleged to have acted with such intent.

"Answer: None."

MR. BALL: Interrogatory H-37:

"Does Riss contend that participation by defendant railroad in the establishment of a Section 22 rate for explosives applicable to more than one railroad--"

Now, I think there is a typo here. I had better check this against the original. This is a copy, and I will hold that up.

THE COURT: Withdraw that for the time being, then.

MR. BALL: Yes, we will withdraw that.

H. 41.

"Does Riss contend that any Section 22 rate of which it complains was fixed at a level which did not return to each carrier participating therein an amount in excess of the full

cost of the transportation services performed at that rate?

13,172 "Answer. No."

* * *

CROSS EXAMINATION OF MR. HILL BY MR. WRIGHT

* * *

BY THE WITNESS:

13,213 The next one is dated August 4, 1955. It bears No. 2 AWR, 293. The subject is the same as the preceding letters. It says:

13,214 "Dear Mr. Barron:

"Referring to your letter July 26, 1955, File A-157.

"The information contained in your telegram of August 1 to the effect that the majority of the Western rail carriers were not favorable to establishment of the point to point rates based 40% of first class was immediately passed to Colonel Flanagan. He informed me that the entire 18,040,000 pounds would therefore be set up for movement by truck. In the event the entire amount should not be moved within 30 days' time, there is a possibility that rail carriers could get into the picture under the Army's policy of reviewing its routing each 30 days. The rail carriers can however expect consideration only on basis of equal costs as compared with truck service.

"Colonel Flanagan is making no secret of his desire to secure the approval of the proposed Column 40 and Column 55 ratings on ammunition nor of his efforts to secure approval of that basis by any means open to him. As you know, he occupies a strategic position with relation to the matter of reducing the railroads' percentage of the Department of Defense ammunition business. For purpose of 'saving the taxpayers' money' the Army in common with other governmental agencies must

13,215 apportion its business among those forms of transportation

providing service at lowest cost. This means that if the truck costs are lower than the rail costs, the rail carriers are not considered to have any right to the traffic. To illustrate, if the Army is about to supply a routing on a million pounds of ammunition and finds that the truck lines have a lower rate than the rail carriers, the entire million pounds must be set up for movement by the truck lines. It is not likely that anyone higher than Colonel Flanagan would criticize him for 'saving the taxpayers' money' in a case of this kind. In the movement of ammunition and explosives, experience has shown us that in a very large number of cases loading and unloading is actually performed at 'igloos' and other locations remote from rail facilities which entails drayage and loading costs when movement is by rail. Truck lines of course have the ability to move a trailer alongside the loading point and eliminate such costs. The rail carriers are almost continuously up against having to provide a rate lower than that quoted by truck lines by the amount of the loading and drayage costs above mentioned. As of present writing, rail percentages of the total ammunition and explosives business for account of the Army and Air Force are available only for
13,216 the months January to May inclusive and I show below a comparison of the rail percentages of the total for those five months in 1955 as compared with the corresponding months in 1954:"

There is a table here, and the caption of it is, "Rail percent of total," and there are two headings:

The first one is, "1954," and the second one is, "1955."

And down in the lower left-hand side, the months of January, February, March, April, May and June are shown, with rail percentages as a total under each of the headings 1954 and 1955.

* * *

THE WITNESS: Instead of reading down all six months, I will read each of the figures straight across:

For January, under 1954, the rail percent was 75 per cent.

13,217 For January, 1955, one year later, the rail percent was 48 per cent.

For February, in 1954, the rail percent was 78 per cent.

One year later, in February, 1955, it was 56 per cent.

In March, under 1954, the rail percent was 73 per cent.

One year later, in March of 1955, 50 per cent.

In April of 1954, the rail percent was 65 per cent.

One year later, in April, 1955, it was 50 per cent.

In May, 1954, the rail percent was 68 per cent.

One year later, in 1955, for May, the rail per cent was 47 per cent.

There has been added in pencil the month of June, which shows that in June, 1954, the rail percent was 61 per cent and for the year 1955, one year later, it was also 61 per cent.

There is also a notation on here in pencil:

It says, "June, 60 per cent. A. P. F. 8-16."

Continuing with the letter --

MR. WRIGHT: Before you go ahead, can you tell us who put that notation there, or what it means?

13,218 THE WITNESS: I put the notation there, and I cannot tell you anything now about it except what is shown here.

BY MR. WRIGHT:

Q. How about the initials "APF?" Do you know what that stands for?

A. Well, no, I can't say that I recall for sure.

Q. Do you know what Col. Flanagan's full name is?

A. Col. Flanagan's name is Andrew Paul Flanagan.

Q. Does that refresh your recollection as to what those initials stood for?

A. Well, sir, my eyes would indicate that that would stand for A. P. Flanagan.

Q. Don't you recall that the figure you have there is the figure you got from Col. Flanagan?

A. Only to the extent that is shown in this letter.

Q. I say, the notation, June, 60 per cent, A. P. F. 8-16," doesn't that suggest to you that on August 16th you got that data from Col. Flanagan?

A. I would say that as -- sure, my eyes would indicate that. I have said that I have no independent recollection of this thing, because this proposal was one of a great many that I handled. It was no different than any other. I handled a very large number of proposals and they were all handled in the same manner.

13,219 This was just one of many, and therefore I don't remember this one any better than any of the others.

Q. Would you continue reading?

A. Continuing the letter:

"I am assured by Colonel Flanagan that the situation described above with regard to loading costs has had a great deal to do with the decline in the rail percentage of the business. With the situation above described it seems to me that it will not be too difficult for Colonel Flanagan to find lower total costs by truck than by rail and to diminish the rail percentage in the interests of "saving the taxpayers' money.' The Colonel tells me that according to Department of Defense records at the time this letter is written, there is in storage over the United States between six and eight million tons of ammunition and explosives which is the highest point ever reached. He assures me that at least 25% of the rail handling for the above months was brought about by the need for transit privileges and for no other reason. He says that from 'now on out'

if any zone office proposes to move any appreciable amount of ammunition by rail and the rail costs are higher than the truck costs, a full explanation will be required by the Office of the Chief of Transportation. Having in mind the very large amount in storage
13,220 as above mentioned, explanations will be very difficult. This requirement of the Office of the Chief of Transportation will not engender any desire on the part of the zone offices to move traffic by rail when rail rates are not equalized with truck rates. In those cases where rail rates and truck rates are found to be the same, it will not be too difficult for Army representatives in possession of all of the information to provide some figures showing that the loading and drayage costs when added to the rail rate produces higher cost than by truck. When this is done, and the traffic is moved by truck, it is not likely that anyone higher up in the Army would criticize that action.

"In view of the situation described above, it seems to me that the rail carriers should very carefully consider the possibility of their percentage of the total ammunition traffic declining to somewhere in the neighborhood of 25% during the year 1956. This is not said in support of anything proposed by the Army or its methods to secure approval.

13,221 "To illustrate what we are almost continually up against, there is a movement of ammunition from Radford, Virginia to Doyline, Louisiana. The rail and truck rates are exactly the same, viz: 332 cents per hundred pounds. The Office of the Chief of Transportation states that the costs of loading this traffic at Radford Arsenal are as follows:"

Now, there is a tabulation above this that shows three headings. The first one is "Explosives." The next heading is "Honest John Jato Nikes." The third heading is "Powder Nitroguandine, etc."

Under each of these headings there is a subheading. The first one is "Rail." The second is "Truck" and there is an amount in cents per hundred pounds below each one of those headings. Reading across from left to right.

"EXPLOSIVES		HONEST JOHN JATO NIKES		POWDER NITROGUANDINE ETC.	
Rail	Truck	Rail	Truck	Rail	Truck
49.47	28.65	72.64	38.72	25.10	16.54 "

Going on with the letter.

"The cost of unloading at Doyline, Louisiana is shown to be:"

And there are two headings, "Explosive Material, and Black Powder." And under each heading a subheading, "Rail, Truck".

13,222 Under "Explosives Material" the cost of unloading by rail was 14.14, and by truck, 21.55.

Under "Black Powder," the cost of unloading by rail was 14.10 and by truck, 21.82.

Now, continuing with the letter.

"It will be observed from these figures that the cost of unloading at Doyline is less by rail than by truck: however, that is offset by the higher cost of loading by rail at point of origin than by truck, taking the first column for example, the comparison of costs would be shown as below:

"Rail	Truck
49.47	28.65
332.	332.
14.14	21.55
395.61	382.20.

"The only source of information up to this time as covering these loading and unloading costs is the Department of Defense, itself. Unless the rail carriers are in position to send people into these installations for purpose of making their own studies, we will be up against having to secure these costs from the Department of Defense. All in all, it appears that the 'set up' would

seem to be conducive to a realization of Colonel Flanagan's objective."

* * *

DIRECT EXAMINATION OF MR. LARSON

BY MR. FLYNN:

* * *

13,271 Q. In 1955 were you informed of a request by the Department of Defense that the railroads negotiate with respect to a reduction in the basis of rates applicable to Government shipments of ammunition and explosives?

13,272 A. Yes.

Q. Was the Southern Pacific agreeable to entering into such negotiations? A. Yes.

Q. Why was that?

A. Well, the Department of Defense had indicated they planned on filing a complaint to endeavor to reduce the 65 per cent basis down to 35 per cent of first class. The Army had indicated to us that they would be agreeable to a higher basis, which was 55 per cent on a minimum of 50,000 pounds, and 40 per cent on a minimum of 80,000 pounds.

In addition to this, we had been losing substantial volumes of traffic to the motor trucks, and this was a very high-paying traffic and we certainly wanted to do what we could to bring it to a level which was acceptable to the Government and continue handling the traffic.

Q. Other than the meetings of the Executive Committee of the Western Traffic Association, did the Southern Pacific discuss with the Department of Defense its proposal with any representative of the Department of Defense? A. Yes.

Q. Who was the representative of the Department of Defense?

A. Col. Flanagan.

Q. Did the Southern Pacific suggest a counter proposal for a reduction in ammunition and explosives rates?

13,273 A. Yes.. We inquired of the Department of Defense if they would be willing to compromise at 50 per cent of first class, minimum 60,000 pounds.

Q. Was that acceptable to the Department of Defense?

A. No. They rejected it. They said the level of the rates was still too high, that they were insistent upon the basis they had requested of 40 per cent on a minimum of 80,000 pounds.

Q. Did the Southern Pacific serve any transit points at that time? A. Yes.

Q. Can you name one or two?

A. Well, Thorne, Nevada.

Q. Would you please indicate where it is on the map there, AWR Exhibit 254?

A. I think the name the Navy calls it is Hawthorne, Nevada. It's located on this branch line and it's about approximately in there (indicating), a storage depot, on a branch line.

Q. Were you informed of any change in the military's policy regarding the use of rail transit privileges?

A. Yes. The Army told us that with continuance of the 65 per cent basis, they would examine all of their transit and use less and less of it, that they would make more use of truck transportation in and out of the transit
13,274 points.

Q. Did you expect that to affect your business? A. We did.

Q. Did you attend the September 28, 1955, meeting of Chief Traffic Officers, held in Washington, D.C.? A. I did.

Q. Was the Army proposal considered at that meeting? A. It was.

Q. Prior to that meeting, had the Southern Pacific reached any decision as to what action should be taken with respect to the Army proposal?

A. Well, we had not made up our minds. We felt that we should discuss this with the other carriers and get everybody's viewpoint. However, we did bring up at that meeting the 50 per cent basis, and during the discussion,

why, we concluded to not submit it, or support it. We withdrew it.

Q. What action was taken by the Western Railroads at that meeting?

A. Western Railroads approved 55 per cent basis of first class, for Transcontinental traffic, and for traffic in Pacific Coast Territory.

* * *

DIRECT EXAMINATION OF MR. PIERRE

BY MR. FLYNN:

* * *

13,350 Q. Did that quotation, Plaintiff's exhibit 201, contain certain routing exceptions?

A. It did contain a number of routing provisions to authorize its application over lines and via routes which were not normal routes in the class rate tariffs. It named a first class rate.

13,351 Q. Did 14-A contain similar routing conditions?

A. Yes, sir, they were identical in the two quotations with one minor exception which was added in 76 and had not appeared in 14-A. The rest of them were the same.

Q. 76 referred to plaintiffs exhibit 201? A. Yes, sir.

Q. Were there other general quotations which became effective in the 10-year period you studied? A. Yes, sir.

Q. Would you tell us what those quotations were? A. Yes, sir.

Effective March 1, 1956, I have a quotation No. 193 which was issued.

Q. Is that shown in exhibit 219-B?

A. Yes, sir. That is shown on page 12 of Exhibit 219-B. That was prescribed Class 45, 28300 scale, minimum 40,000 pounds, and 80 per cent of Class 45 rate on the excess weight in the same car between points within IFA territory, which would be within B and C (indicating on map.)

Q. Shown on AWR exhibit 303?

A. Shown on AWR Exhibit 303. Effective on the same date, WTL quotation 1242, TEA-ER No. A-1840, became effective applying the same basis of rates on the 28,300 scale, between points within Western Trunkline

13,352 Territory, between Western Trunkline and Illinois Freight Territory, on the one hand, and Eastern Territory on the other, and that was superseded a month later effective April 1, 1956, by WTL No. 1253; IFA number A-1530; TEA-ER No. 1840-A, which provided Class 45, 28,300 scale, minimum 40,000 pounds and 80 per cent of Class 45 rates on excess over 40,000 pounds we loaded in the same car, on the general description of ammunition, explosives and ordnance. Within the same territories, Western Trunklines, Southwestern, Illinois Freight Association and also to and from the Southern Territory, as well as the Eastern Territory.

In other words, what I mean is that the South was added a month later than the others.

Q. Where is that?

A. Those, both quotations are shown on page 13 of Plaintiff's exhibit 219-B.

Q. Now, Mr. Pierre--

A. There is one other.

Q. --let us stick with this one for a minute. Was that applicable throughout Western Trunkline Territory?

A. That was applicable throughout Western Trunkline territory with the exception of the Northern Lines Territory.

13,353 Q. That is shown on AWR exhibit 57?

A. Yes, sir, and perhaps a little more clearly on that other exhibit over there.

Q. The other exhibit you refer to is AWR exhibit 58, right?

A. Yes, sir. The lines coincide on the two. The 55 per cent of first class of the old rates continued to apply within and from and to that territory.

Q. What about the portion of Western Trunkline Territory which was est of the Docket 28,300 line?

A. That did not apply. It stopped at the border of 28,300 territory as shown by the North-South black line on Exhibit 58.

Q. That is this line on AWR exhibit 58.

A. Yes. While Western Trunkline territory does extend west of there, this basis of rates did not extend out there. The 55 per cent of old first class rates continued to apply there.

Q. Now, as initially issued, it also applied, I take it, from as much of the Western Trunkline Territory as lay east of the docket 28300 line and south of the Northern lines boundary, and from Illinois Freight Association Territory, shown on AWR exhibit 57, to and from Eastern Territory?

A. Yes, sir.

13,354 Q. And then the later event that you referred to on April 1--

A. Well, it is a later quotation that canceled the first one.

Q. A later quotation?

A. Yes.

Q. On April 1, made the same rates applicable to and from that area, AWR exhibit 57, and the Southern Territory?

A. That is correct. I have one other.

Q. What was the next one?

A. On page 17 of Plaintiff's exhibit 219-B, we have SWFB quotation 1798--

Q. I think that identifies it for us, Mr. Pierre.

A. That provided for this same basis of rates within Southwestern Freight Bureau Territory, and between Southwestern on the one hand and Western Trunklines, IFA and Eastern Territory on the other hand.

That quotation, likewise, that was effective March 1, 1956, and was superseded effective April 1, 1956, by SWFB 1810, and so forth, which extended that basis to apply between the Southwestern Territory and the Southern Territory.

13,355 Q. In other words, the quotations shown on page 17 of Plaintiff's exhibit 219-B applied within the area shown on AWR exhibit 57 in Southwestern territory, and between Southwestern and Western Trunkline and between Southwestern and Illinois Freight Association Territory and Southwestern and Eastern Territory, as of March 1.

A. That was the March 1 quotation, yes.

Q. Then on April 1 it also became applicable between Southwestern territory and Southern territory?

A. That is correct, sir.

Q. Was that quotation--

A. Pardon me. That, likewise, did not apply to any place west of that black line, the Western boundary of 28,300.

Q. Did that quotation apply within the jurisdiction of the Texas-Louisiana Freight Bureau?

A. It did.

Q. Shown on AWR exhibit 57?

A. That is right. That is included within Southwestern Territory.

Q. What is the quotation shown on page 18, then of Plaintiff's exhibit 219-B?

A. On page 18 of plaintiff's exhibit 219-B is shown TLFB, Texas Lines Freight Bureau, that is, quotation 174 which, on a limited description of ammunition and explosives applied Class 45, minimum 40,000 pounds; and 80 per cent of Class 45 rates on the excess over 40,000 pounds between points within Texas.

13,356 Q. Just within the State of Texas?

A. Yes, sir.

Q. Just within the State of Texas, you say?

A. Yes, which would be the territory designated by the letter "E" on defendant's exhibit 303.

That was based upon--rather, applied between points in Texas both by intrastate routes and also via interstate routes that went in from Texas into another State and back to Texas again.

Q. Would you read the note in connection with that quotation, please, sir?

A. Note 1, page 18:

"This quotation represents part of a general adjustment adopted for the purpose of making the rail carriers competitive with the motor carriers. The basis used represents 45 per cent of ICC Docket 28300, first class rates, minimum 40,000 pounds, and 80 per cent of Class 45, on any weight in excess of 40,000 pounds. This quotation was canceled by TLFB quotation No. 1, effective November 30, 1957. However, the basis was not changed."

* * *

READING OF ACL EXHIBIT NO. 507

BY MR. SHEA

* * *

13,569 "In my opinion, however, any such effect of the April 1, 1956 adjustment in the general rail rate basis was largely if not entirely temporary in nature as many motor carriers operating in Southern Territory soon began to meet and often to undercut the adjusted rail rates applicable to routes over which important movements of ammunition and explosives occurred.

13,570 ACL Exhibit No. 506 describes the point-to-point quotations of rail rates for the movement of ammunition and explosives within Southern Territory between January 1, 1949 and December 31, 1958, inclusive. Plaintiff's Exhibit No. 218 describes the point-to-point quotations of rates between Southern Territory and Eastern Territory and Plaintiff's Exhibit 219K describes the point-to-point quotations between Southern Territory and Western Territory, during the same period. As is shown by those exhibits, the Southern railroads have found it necessary on many occasions since the April 1, 1956 adjustment in the general rate basis to quote lower rates in order to meet prior reductions in motor-carrier rates. During the period following the adjustment in the general rate basis and until September of 1958, Atlantic Coast Line Railroad Company refused to make any further reduction in the rates to and from Sunny Point (Leland, North Carolina) despite reports which I received of lower motor-carrier rates and the movement of large amounts of the traffic by truck. By September of 1958, however, the diversion of the Sunny Point traffic to motor carriers had become so substantial that I decided that we would have to meet the lower motor-carrier rates between some of the more important Government installations and Sunny Point if we were to continue to compete effectively for the traffic. I have no doubt, therefore, that motor carriers have competed vigorously

13,571 . . with Atlantic Coast Line Railroad Company for Government ammunition and explosives traffic since the April 1, 1956 adjustment in the general rate basis."

I wonder, do you have, can you lay hands readily on this 506? Would you turn first to page 12, you will find in the first column the number of the Quotation. Do you have page 12, and you have it, Your Honor. You will find what is set out first is the number of the Quotation, and then the number of the file, and then the effective date, and if you will drop down, you will see the last item there is July 5, 1956, and if you will ruffle the pages from there on, you will find that all of the Quotations after that are subsequent to the rate adjustment made by the Southern roads on April 1 of 1956. And then the next column is the date cancelled, the next column is the commodity involved, the next column is the point-to-point, what the movement was, the points between which it applied, and the next is the rate, and the next the minimum weight on which the rate applied, who proposed it, applicable by which roads, and then what the prior rate basis was. And then you will find "Notes" out on the side and you will see that Note 33 relates to that July 5, 1956 rate, and so each of the Notes after that 33 -- each of the Notes following Note 33 relate to rate adjustment made subsequent to the 45 - 36 general rate adjustment made in the South on April 1 of 1956.

And may I ask you then if you will turn back to the next to the last page in
13,572 this exhibit, and I am not going to try to carry you through all of these Notes, but let me read you some samples, if I may. Note 34, and this is subsequent to the April 1, 1956 adjustment -- Note 34, you find that, Your Honor?

THE COURT: Yes.

MR. SHEA: "This quotation, issued to the Department of the Army, resulted from a proposal of the Southern Railway approved by all carriers under the usual Association procedure. Rate of 70 cents per 100 lbs., minimum weight 90,000 lbs., is quoted to meet the same rate minimum weight 27,500 lbs., quoted by the motor carriers."

Note 35: "This quotation resulted from an L&N RR proposal which was approved by all carriers under the usual Association procedure. A rate of 78 cents is quoted to the Department of the Army, to meet rates tendered by

Hays Freight Lines of 95 cents per 100 lbs., minimum 30,000 lbs., and 76 cents per 100 lbs., for weight in excess of 30,000 lbs. The rate of 78 cents per 100 lbs. via rail is necessary because the movement is from and to igloos, warehouses, and firing ranges at Fort Estill and Fort Campbell, which are served by trucks from the rail terminal. When the quotation was issued it was estimated that the rail disability amounted to 10 cents per 100 lbs."

Note 36: "A Southern Railway proposal, approved by all carriers through the usual Association procedure, resulted in this quotation.

13,573 A rate of 75 cents per 100 lbs., minimum weight 50,000 lbs., is quoted to the Department of the Army which was the same rate, volume minimum weight 30,000 lbs., as per Supplement 13, to Baggetts's MF-ICC 100.

"Effective July 1, 1957 Supplement 43, to MF-ICC 100, of the Baggett Transportation Company tendered a rate of 94 cents per 100 lbs., volume minimum 30,000 lbs. which represented an increase of 19 cents per 100 lbs. over the prior truck rate. The rail quotation was then amended effective December 1, 1957 to provide for rate of 84 cents per 100 lbs. minimum weight 50,000 lbs. The 84 cent rail rate was made 10 cents per 100 lbs. less than the truck rate which equaled the amount by which the cost of handling and loading by rail exceeded the cost of handling and loading by the motor carriers."

Then 37: "This quotation resulted from an N&W Railway proposal approved by all carriers through the usual Association procedure. The quotation is issued to the Department of the Army, to meet a rate of 132 cents per 100 lbs. minimum weight 30,000 lbs. per vehicle as quoted by the Hughes Transportation Incorporated and Hayes Freight Lines Incorporated. The rail quoted rate is 132 cents per 100 lbs. subject to a deduction of 21 cents per 100 lbs. to take care of the cost of drayage, loading, etc., at Cowan and Wysor, Va., representing the approximate amount the cost for such service exceeded the cost of loading and handling by highway vehicle.

13,574 "Effective August 5, 1957 these motor carriers revised their quotation by quoting a rate of 152 cents per 100 lbs. minimum 30,000 lbs.

Effective November 3, 1957 the rail quotation was amended to name a rate of 152 cents per 100 lbs., with a deduction of 21 cents per 100 lbs., to cover the cost of drayage etc.

"SFA Section 22 Quotation Advice A1514 (3-12-56) quoted a rate from and to these same points but it was cancelled effective April 30, 1957."

Then if you will drop down to Note 40: "A proposal of the ACL RR, approved by all carriers under Association procedure, resulted in this quotation. The rates are quoted to the Military Traffic Management Agency and were to equalize rates available by the motor carriers. The rate to Bynum, Ala., was quoted by the B C Truck Line Incorporated, the rate to Inness, S. C., by R. C. Motor Lines, and Hamburger Motor Express in Section 22 Quotation Tender N-29, and the rates to Virginia cities were named by Mercury Motor Express Incorporated in Navy Tender No. 20."

Take 41: "This quotation was suggested by the Southern Railway in a proposal which was approved by all carriers under the usual Association procedure. The rates are quoted to the Military Traffic Management Agency, and were designed to meet those quoted by Baggett Transportation Incorporated, and V. C. Truck Lines.

13,575 "The rail quoted rates are 81 cents per 100 lbs., minimum weight 50,000 lbs. on ammunition and related articles, and 65 cents per 100 lbs., minimum weight 40,000 lbs. on small arms ammunition. The rate on ammunition etc., was made 5 cents under the truck rate to take care of the rail disability for loading explosives and ammunition. The rate on small arms ammunition was made the same as the truck rate, as there was no disability for loading."

MR. BALL: I am having difficulty hearing you.

MR. SHEA: I will raise my voice. Note 44: "A proposal of the ACL RR, approved by all carriers through Association procedure, resulted in this quotation being issued to the Military Traffic Management Agency. The quotation originally authorized a rate of 116 cents per 100 lbs., minimum

weight 40,000 lbs. with rate of 100 cents per 100 lbs., for that part of the weight loaded in the same car in excess of 40,000 lbs. These rates were to meet rate of 116 cents per 100 lbs., volume minimum 90,000 lbs. authorized by the motor carriers." And et cetera. Well, that is sufficient for that.

* * *

READING OF SOUTHERN RAILWAY EX. NO. 2

BY MR. SHEA

* * *

13,593 I neither intended nor expected that the quotation of the adjusted general rate basis would eliminate motor-carrier competition for Government shipments of ammunition and explosives or obtain a monopoly of that traffic for the railroads. As I have already testified, my belief was that the motor carriers could and would meet the adjusted rail rates or cut below them and continue to compete vigorously for the traffic.

13,594 "Since April 1, 1956, motor carriers operating in Southern Territory have in fact met the adjusted rail rates and in many instance have quoted lower point-to-point rates for the movement of Government ammunition and explosives. These lower motor carrier rates often have required further point-to-point reductions in the rail rates in order to meet the competition.

"I have had prepared an exhibit, based on the railroad rate studies, which lists the Southern Freight Association quotations, between April 1, 1956 and December 31, 1958, of reduced rates for the movement of Government ammunition and explosives between particular points in order to meet motor-carrier rates. That exhibit, which has been marked as Southern Exhibit No. 3, shows the reduced rail rate in cents per hundred pounds and also as a percentage of Docket 28300 first-class rates. The proponderance of the traffic between Bynum, Alabama and Sunny Point, North Carolina had been diverted to truck transportation because of lower motor-carrier rates before we could obtain the consent of the Atlantic Coast Line Railroad Company to a point-to-point

quotation designed to meet the motor-carrier competition.

13,595 As is shown by ACL Exhibit No. 506, at page 17, such a quotation was not made until September 29, 1958." I would like now to call the attention of the Jury to Southern Exhibit No. 3, which Mr. King has just referred to. The heading of that Exhibit reads as follows:

"Southern Freight Association Quotations, made to meet motor-carrier competition subsequent to April 1, 1956" -- that is the date of the general rate adjustment --

" -- of rates lower than the rates provided by the April 1, 1956 adjustment in the general rate basis."

And the footnote indicates -- this excludes small arms ammunition and is confined to ammunition and explosives.

The first column is the number of the quotation; the second is the effective date; and you will see that all of those are after the general rate adjustment.

The date of the cancellation, the routes.

And you will see from Milan to Doyline, Milan to Dana, Tyner to Holston and Kingsport --

If you just run your eye down you will see a great variety of points involved.

And then the next is Section 22 rate, generally in cents per hundred pounds. In some instances minima are designated and in others not.

13,596 And then it gives you the Class 28300 first class rate, and then the last column is the percentage of that first class rate which permits you to compare it with the general rate adjustment of 45-36, as you will recall it, and if you will run your eye down there you will see to what extent the 45-36 rate which is being complained of was cut under in the subsequent competition between the railroads and motor carriers.

I won't bother to read them all but just run your eye down that column and it will show you what deep further cuts were made.

Mr. Gates suggested particularly that I call your attention to the second item on page 3 which made the further cut from the 45-36 down to 41-33.

* * *

READING OF SEABOARD AIRLINE RAILROAD NO. 2

BY MR. SHEA

* * *

13, 617 "While I hoped that Seaboard Air Line Railroad Company would regain some of the ammunition and explosives traffic that had been lost to the motor carriers and would compete more effectively for the traffic than it had been 13,618 doing, I neither expected nor intended that the adjusted general rate basis would exclude motor-carrier competition for ammunition and explosives traffic or obtain a monopoly of the traffic for the railroads. I had no doubt that the more efficient motor carriers would be able to meet the reduced rates, if not undercut them. A number of motor carriers had already quoted lower rates for the movement of Government ammunition and explosives on a point-to-point basis and Malone Freight Line had made a general quotation of lower rates. While I had been informed that Malone was not a major factor in the movement of ammunition and explosives in Southern Territory, despite its lower rates, because it frequently was unable to supply equipment when needed, the Malone quotation did indicate that a motor carrier could quote a general basis of rates which would meet the adjusted general rail rate basis.

"The April 1, 1956 adjustment in the general rail rate basis probably resulted in a substantial increase in the amount of Government ammunition and explosives transported by the Southern railroads during the first few months following the rate adjustment. It naturally required some time for the motor carriers to decide on, prepare and file new or amended quotations of rates 13,619 designed to meet or undercut the adjusted rail rates. In addition, as I ascertained from the military traffic officers, the Department of Defense

gave immediate effect to the quotations making the adjustment in the general rail rate basis in accordance with its policy with respect to negotiated quotations of rates requested by the Department of Defense. Under this policy where traffic had been routed but not yet shipped when the quotations were filed, and lower rates were provided by the quotations, the routing was changed to take advantage of these lower rates. This was not done where lower rates were provided by voluntary quotations not requested by the Department of Defense unless the quotation had been on file with the Department of Defense for 30 days.

"Any such advantages did not last for more than a few months, however, as the motor carriers operating in Southern Territory soon began to meet and even to undercut the adjusted rail rates applicable to many routes. As is shown by the point-to-point rate studies, ACL Exh. No. 506, Plaintiff's Ex. No. 218 and Plaintiff's Exh. No. 219K, the southern railroads were required on a number of occasions to further reduce their rates between various points in order to meet the competition provided by prior reductions in the truck rate below the level provided by the adjusted general rail rate basis. Thus, 13,620 I am convinced that the April 1, 1956 adjustment in the general rail rate basis did not eliminate the competition of motor carriers with Seaboard Air Line Railroad Company for the transportation of Government ammunition and explosives, although it may have enabled Seaboard to compete more effectively for the traffic.

* * *

* * *

DIRECT EXAMINATION OF MR. MATTHEWS

BY MR. HAYS

* * *

13,840 Q. Tell me, Mr. Matthews, for about how long have you been acquainted with the service and the facilities of Riss and Company?

A. I have been acquainted with it since we started using it, when they acquired their refrigerator equipment. I knew of them before that, but I had no personal contact with the company.

Q. Can you say approximately when you began to use Riss and Company?

13,841 A. I think in the latter part of 1954, during 1954, I wouldn't know exactly when, through 1955, 1956 and 1957.

Q. You use the Riss and Company, can you estimate how many loads or how frequently your service would require the Riss service?

A. From these plants that I have described to the destinations I described, there are movements every week; however, the amount varies depending on the availability of livestock and the time of year. But there are always movements, so Riss has as much opportunity for those movements as other certificated carriers would have and was used, when its equipment was first acquired, rather extensively.

Q. Mr. Matthews, do you keep a separate record of the amounts paid to individual motor carriers used in your service?

A. No, we do not, except occasional checks as a rather rough idea of what the total amount is.

Q. Can you say the year in which the peak of your service -- in which you did the most business with Riss and Company?

A. 1955.

Q. And have you an independent recollection of the approximate amount that you paid to Riss and Company during 1955 for the service that you used?

A. I recall that Riss and Company was one of the larger carriers in so far as total business with any individual one, and at that time we had
13,842 roughly estimated that it was very close to a million dollars.

Q. That is a million dollars in transportation charges you paid to Riss in the year 1955.

Do you still use Riss extensively?

* * *

Q. Do you still use the services of Riss and Company?

A. Only on a very limited basis.

Q. And why do you use it on a limited basis as contrasted with the extended use in 1955?

13,843 A. During 1956, it became necessary to curtail our use of Riss service due to service performed and outstanding claims were not satisfactorily settled, and after a good deal of trying back and forth, reestablishing, taking them out of business and putting them back in, we finally left the decision to the individual shipping plant whether or not they use him, because they have to settle the claim. I might add a little to that, that will clarify why we got to that kind of a decision. During this time, Armour and Company's organization changed somewhat, to the point where more responsibility was added to the individual transportation manager at the shipping plant to conduct his business in line with company policy and take the result of it as his responsibility. And therefore we put in the hands of the transportation manager at Fort Worth, Texas, for example, the responsibility of moving the product and collecting in a satisfactory manner or collecting the claims, or changing the carrier, if necessary. This was a mutual understanding between my office and the offices in these plants.

Q. Approximately how many men are in your organization, Mr. Matthews?

A. We have 35 in the general office; and in each of these shipping plants, depending on the size, we have from 2 to 15.

Q. These shipping plants are indicated on the map with a circle, is that right, the branch houses?

A. No, the shipping plants are indicated with a square.

13,844 Q. I see.

A. The branch houses are circles; the branch houses are destinations.

Q. They are destinations, are they not, for the long haul movements that you have just been describing?

A. That is correct. The branch houses located near the packing plants, as you will note on the map, receive their product from the packing house near them, as would be expected, but it is not considered a long haul; it is not what I have been talking about. I am talking about the branch houses, the little circles, in the New England States, New York and Pennsylvania, et cetera, as destinations involving shipments with Riss and Company.

Q. If you will, Mr. Matthews, tell the jury how this product is moved into the branch house and then finally finds its way to the ultimate consumer.

A. The line haul carrier, the common carrier truck, railroad car, our own truck, takes the shipment from Fort Worth, Texas, to New York City and unloads at a branch house. In our branch house, we have a cooler, refrigerated room, in which there are rails to again suspend the meat, the same as it was in the packing house cooler, and is then distributed to stores on small trucks that we operate, that we own and operate with our own drivers, after having been sold by our salesman to these stores, chain stores or independent stores, as the case may be.

13,845 Q. Are all of your shipments from these river points into the eastern area shipped direct to your branch houses or do some of them go to chain stores?

A. The chain store development has increased a great deal in the last few years to the point where the shipments from branch houses are not nearly so important as they were five years ago. Today most of the shipments go to the chain store warehouses; five years ago most went to the branch houses. In other words, it was a changing period.

Q. Now, you said in 1956 you began to experience some difficulty with Riss and Company. Will you describe to the jury about what occurred at that time in that connection?

A. The lamb season being early in the year, spring, difficulties arise in handling shipments properly in connection with those shipments and then the question of settling the claim is paramount in the eyes of the branch house manager, who of course, has the responsibility for the result. We experienced difficulty in having the product delivered properly, that is, freshness maintained so that it would be acceptable either to our branch manager or to the store, the chain store, during that time; it was off condition, which means that it has lost its appearance, stock was losing its appearance to the point where it could no longer be sold, depending on the individual case, and the service was so unsatisfactory that we had to stop.

Q. Can you explain to some of the people here on the jury,
13,846 Mr. Matthews, what you meat packers describe as the term "bloom"?

A. Bloom is our description of freshness. If it looks like it did ten or twelve hours after it was killed, the first refrigeration affected it so that it is so-called "set," that is the finest appearance it will ever have; anything different than that is designated as losing its bloom. It is a matter of personal opinion by experts in the business; I don't consider myself as an expert in the meat business, but I have heard it so described. I know what they mean when it becomes necessary to settle a claim.

Q. What is the basis for claims based upon the condition of the meat alleged to have occurred in transportation?

A. The value, in connection with every shipment, in so far as the packing house is concerned, is the sale -- even though it may go to our own branch houses -- and the value is put on that load, in dollars, at the destination; the packing house pays the transportation charge, puts the value on the product at destination. The claim is based on the difference between that and the realization from the product, after we have exercised our greatest ability to

minimize the claim. In other words, we are responsible to hold the claim to a minimum by making the best possible disposition of the product.

Q. What causes the product to deteriorate in transportation?

A. Two things, change in temperature and time. Most important,
13,847 of course, would be the change in temperature; if you have both, you have a greater loss but the time is a factor in some products more than others, pork and lamb being the worst, beef permitting more time, if the temperature is right.

Q. And the constancy of temperature, I believe you said that maintains the evenness of quality?

A. The best possible result is obtained from constant temperature or temperature with minimum change except that necessary for the ordinary cutting in and out of the unit to maintain it.

Q. Now, in 1956, Mr. Matthews, when you began to have trouble with the service given to you by Riss and Company, describe the kind and character of trouble you were having and the reasons for it.

A. Well, the trouble was delayed transit, not arriving on time; however, I must add that there was no guarantee in the Riss tariff of arrival. That is done with carrier truckers on the mutual understanding that they will arrive approximately such-and-such a time on a given day. Many times it happened that they weren't there; consequently, the customer would not accept the shipment. The time factor then had an effect on the product. And also refrigeration failures or changes in temperature caused deterioration of the product on arrival and therefore unacceptable to the customer and therefore had to be salvaged. May I correct the word "salvaged," that is a misnomer,
13,848 it had to be sold to other customers to best advantage, and then a claim originated on it.

Q. Did you take any action with reference to the use of Riss and Company by your plants and branches with reference to instructions as to their use?

A. Yes, sir. I instructed my transportation manager to stop using Riss and to issue necessary instructions to follow it out.

Q. Handing you AWR Exhibit 325-A, Mr. Matthews, I will ask you to state what that is?

* * *

13,851 Q. Read 325-A.

A. A telegram dated May 17, 1956, addressed to Mr. Pemberton at Fort Worth, Mr. Butler at Oklahoma City, Mr. Pagel at Kansas City, Mr. McMullan at St. Joseph, Missouri, Mr. Phelps at South Omaha, Nebraska, Mr. Anderson of the National Stock Yards, Illinois, Mr. Reid at Denver, Colorado, Mr. Throckmorton at Peoria, Illinois, who are the plant transportation managers at those respective shipping plants, or rather were at that time. The telegram says:

> "Effective immediately discontinue using Riss & Company until further notice. If it develops that you need help on securing motor carrier to handle your shipments contact W. P. Kent truck operating section. Acknowledge receipt D-311."
>
> "D. A. Chute"

Mr. Kent is a supervisor in our office under the direction of Mr. D. A. Chute, who is my transportation manager. The "D-311" is a number used to designate telegrams in our communication system.

Q. What was the reason for the sending of that telegram?

A. The complaints on the service from destinations reached a

13,852 point where it was necessary to discontinue the service of this carrier. I might add that that is a step we take only after making efforts to get the service straightened out, keep it on a satisfactory basis. When we reached this point, we have tried before we make such movement.

Q. Now, after that telegram went out, did you at any time thereafter confer with a representative of Riss and Company to take any further action?

A. Yes, naturally, the representatives of the Riss Company became very active to get their service straightened out and made many promises and

some changes. And we then tried again by offering some relief to this telegram that I have just read.

Q. All right. Referring to the next to the bottom one there, Mr. Matthews, that is AWR Exhibit 325-B. Did you send further communication and under what date?

A. May 24, 1956.

MR. HAYS: I offer Exhibit 325-B, Mr. Wright.

MR. WRIGHT: No objection.

THE COURT: It may be admitted.

(Defendant No. 2 AWR Exhibit No. 325-B was received in evidence.)

BY MR. HAYS:

Q. Will you proceed to read 325-B?

A. It is a telegram dated May 24, 1956, addressed to Mr. D. B. Throckmorton, Armour and Company Plant, Peoria, Illinois, stating:

13,853 "Rescind my telegram D-311 May 17. Give Riss & Company their portion of eastern shipments. D-322"

By "D. A. Chute" the same man who sent the previous wire.

Q. Now, I notice that is directed to Mr. Throckmorton at Peoria, Illinois, and does not indicate that the same wire was sent to all the other plants who received the first wire. Can you explain the difference there and why that happened that way?

A. The agreement was to try Riss service by starting from one plant, that being Peoria. Consequently, this instruction went only to Peoria.

* * *

Q. Referring to Defendant's Exhibit 325-C, what action did you take, approximately a month after the May 24th wire to Mr. Throckmorton?

A. This is an intercompany memorandum dated June 13, 1956, addressed to Mr. C. S. Thurlow, Armour Company, 131 State Street, Boston, Massachusetts. Mr. Thurlow is the transportation manager for the Boston

district or covering an area of the New England States, on the receiving end.

13,854 Q. What was the occasion or the reason for that telegram?

A. This is in answer to a request for information from Mr. Thurlow, and the answer was provided to indicate what action we had taken with respect to Riss and Company.

* * *

Q. Mr. Matthews, you said that Mr. Chute was employed by you and took this action according to your direction?

13,855 A. Yes, sir.

Q. Will you examine Exhibit 325-C and tell us whether or not you are familiar with the subject matter of that communication?

A. Yes, sir, I am familiar with it.

Q. Do you hold any opinion as to the contents or the subject matter of that communication, yourself?

A. Yes, sir.

Q. Is the opinion expressed by the sender of that communication the opinion held by yourself?

A. Yes, sir. This communication was sent by my direction, after consultation with me.

THE COURT: All right, you may proceed.

MR. HAYS: I now offer C.

THE COURT: Is there still any objection?

MR. WRIGHT: No, there is no objection if he adopts this.

THE COURT: In other words, your opinion is substantially the same as the opinion expressed in 325-C, is that correct, Mr. Matthews?

THE WITNESS: Yes, sir.

MR. WRIGHT: In that case, I don't see what purpose the offer serves. He said, I gather, that in his opinion the Riss service was poor.

THE COURT: All right, you may proceed.

(Defendant No. 2 AWR Exhibit No. 325-C was received in evidence.)

* * *

13,856 BY MR. HAYS:

Q. Mr. Matthews, will you please read 325-C?

13,857 A. It is an intercompany memorandum to Mr. Thurlow, dated June 13, 1956. It says:

"As you were previously advised, we are only using Riss and Company on shipments of our products that we cannot move via any other motor carrier. We know that Riss' service is poor, and we have been working with them to try to straighten it out. However, we have had no success with their general office, and these instructions were issued after our attempt to straighten out the problem.

"The only other alternative is to ship via rail which we intend to do."

Signed by "D. A. Chute." Copies went to Mr. Pemberton, who received the original instruction, and Mr. R. C. Meyer of Armour and Company, 120 Broadway, New York, who is transportation manager in the New York area.

Q. Now, I will refer you to Exhibit 325-D, Mr. Matthews. That also is the 13th day of June, 1956. I will ask you to state what action was taken in connection with this telegram. What led up to it?

A. This is the result of further negotiation and work with Riss and Company to try to reestablish our business with them and using them to some extent and the result not being satisfactory, we finally issued this additional instruction or instruction in lieu of one that was already in existence.

13,858 MR. HAYS: We offer 325-D.

THE COURT: Any objection?

MR. WRIGHT: No.

THE COURT: It may be admitted.

* * *

13,861 Q. Mr. Matthews, the last one we were talking about, 325-D, I believe, the telegram that you had sent to the same shipping points and officers rescinding your wire D-311, which was the original order not to use Riss, in which you said, "Only ship by Riss & Company those loads on which you cannot secure any other motor carriers to handle."

Now, with reference to 325-E.

13,862 MR. HAYS: "D" has been received, has it not?

THE COURT: I thought it had been.

Anyway, do you offer it?

BY MR. HAYS:

Q. Please read 325-D, Mr. Matthews, just to be sure the jury has that in.

A. Telegram dated June 13, 1956, to the Transportation Managers of the respective shipping plants, stating,

"This rescinds my wire D-311. Only ship by Riss & Company those loads on which you cannot secure any other motor carrier to handle. D-399,"

issued by my instructions.

BY MR. HAYS:

Q. The first order was an absolute order not to use Riss, was it not?

THE COURT: Wait a minute. I think he has already gone over this.

I think that is in effect summarizing the testimony, I mean.

BY MR. HAYS:

Q. Would you explain the difference between 325-D and 325-A, Mr. Matthews?

A. 325-A issued instructions to discontinue using Riss, and stated further:

"If it develops that you need help on securing motor carriers

13,863 to handle, contact Mr. Kent in our office.

This one changed that by rescinding the original instruction and stating only to ship by Riss & Company those loads in which you cannot secure any other motor carriers.

In other words, it permitted shipments on Riss if there were no other carriers available.

Q. Now, turning to 325-E, Mr. Matthews, I will ask you to state what occurred between June 13, 1956 and August 29, 1956, with reference to this service arrangement?

A. After a great deal of discussion between the Riss solicitors and the people with us on the changes they claimed to have made in their service, improvements and so forth, we issued an instruction to rescind the instruction of June 13th.

In other words, we put them back in business with us and issued instruction to the same people.

MR. HAYS: I offer 325-E in evidence.

THE COURT: Is there any objection?

MR. WRIGHT: No objection.

THE COURT: It may be received.

(Thereupon telegram marked Defendant No. 2 (AWR) Exhibit No. 325-E for identification was received in evidence.)

13,864 BY MR. HAYS:

Q. Please read 325-E to the jury.

A. Sent to the same people, dated August 25, 1956, to the same plants, and with an addition of the Chicago plant.

It says:

"Cancel my wire D-399 re Riss & Company, confirm receipt. D-396." Sent to all other people concerned at the destination.

And this re-establishes Riss in business with us.

Q. I refer to 325-F dated September 11, 1956, and ask you to state what that is before you read it.

A. That is a telegram to Mr. Phelps, Transportation Manager at our South Omaha, Nebraska, plant, pertaining to previous instructions issued in connection with Riss & Company.

MR. HAYS: I offer 325-F.

THE COURT: Any objection?

MR. WRIGHT: No objection.

THE COURT: It may be admitted.

(Thereupon telegram 9-11-56 to Mr. Phelps marked Defendant 2 (AWR) Exhibit 325-F for identification, received in evidence.)

BY MR. HAYS:

13,865 Q. Would you please read 325-F, Mr. Matthews?

A. Dated September 11, 1956, to Mr. Phelps, P-279, "On May 17 our D-311 of which you acknowledge receipt, instructed you to discontinue using Riss & Company until futher notice.

"On June 13th we rescinded my D-311 informing you to ship by Riss & Company those loads on which you could not secure any other motor carrier to handle, my telegram D-339.

"On August 29 we informed you to cancel my wire, D-399, to use Riss & Company at your own discretion. In other words, you can use Riss & Company to any point to which they can provide service." D-5, by Mr. D. A. Chute.

Q. Go ahead and explain the basis for that.

A. That is a clarification of instructions resulting from a question that Mr. Phelps asked to bring him up-to-date to know exactly where we stood at that time.

Q. Now, between September 11, 1956, and December 19, 1956, as reflected in 325-G, please state what occurred.

A. During that time shipments that were moving by Riss & Company moved on this long haul from the river plants to the Eastern Seaboard, part of them moved partly by highway and part piggyback, usually taking into the piggyback service at St. Louis on the Pennsylvania Railroad.

The result of that was that our shipping plants at Fort Worth,
13,866 Kansas City, St. Joseph, Omaha, et cetera, didn't know that the shipment would not move over the roads entirely, and we had difficulty because of the connection between the over-the-road service, and the piggyback service, resulting in delays at the destination end.

This resulted in the instruction issued on December 19th, 1956.

Q. Now, describing this delay business, will you describe what you mean by "the failure of connections," and what experience you had in that regard?

A. Piggyback trains, or any other trains, for that matter, but piggyback particularly, run on schedule, and if the connection isn't there from beyond the point of origin of the piggyback service, the train goes anyhow, and the service then is usually delayed for one more day at destination. Consequently, it is very important that these connections be maintained, and more important that the shipping points know that there is an interchange involved at such a point so they can be sure that the shipment is on the way in time to make it. And this was not the case in many of these shipments, or several of them, I should say, and they had to issue some instructions to straighten it out.

Q. I will ask you to state whether or not these piggyback trains run every day?

13,867 A. Normally they do. In some cases, with long holiday week-ends, they do not, because there is no service at the destination end to unload them, so the train is not scheduled to run.

Q. Had you any experience with Riss' service with regard to a holiday weekend connection in St. Louis?

A. There was one load, I remember, originating, I believe, in Fort Worth, that was to make connection in St. Louis for a piggyback train and the train didn't run on that day and the entire load was lost.

MR. HAYS: We offer "G" in evidence.

THE COURT: Any objection?

MR. WRIGHT: "G" appears to be signed by Mr. L. H. Roegner. I suppose there ought to be some preliminary explanation who he is.

THE COURT: Yes, let's develop that a little.

BY MR. HAYS:

Q. Exhibit 325-G, Mr. Matthews, which has been marked for identification 325-G, is a copy of a memorandum which instead of being signed by Mr. Chute, who signed the earlier exhibits identified here, is signed by whom?

A. Mr. L. H. Roegner.

Q. Tell us who Mr. Roegner is.

A. Mr. Roegner reports to Mr. Chute, and actually the two work as one in a combination in our food transportation.

13,868 Q. Are they subject to your direction?

A. Yes, sir.

Q. The action taken in that connection, then, was pursuant to your direction?

A. That's correct.

MR. HAYS: I offer 325-G.

MR. WRIGHT: No objection.

THE COURT: It may be admitted.

(Thereupon memorandum 12-19-56 signed "L. H. Roegner" marked Defendant No. 2 (AWR) Exhibit 325-G for identification, was received in evidence.)

BY MR. HAYS:

Q. Will you please read that to the jury, Mr. Matthews?

A. This is an inter-company memorandum addressed to two groups of people, one being the same transportation managers referred to previously; the other group being the managers of the plants involved.

For example, Mr. B. L. Thomas is on the same line with Mr. W. D. Reid, both Denver, Colorado. Mr. Thomas is the plant manager and Mr. Reid was the transportation manager, and so on, it goes for the addressee.

Q. The name shown in the left column is the plant manager, and in the middle column, the transportation manager?

13,869 A. That's correct. It is dated December 19, 1956, and states:

"Effective immediately and until further advised you should refrain from using the service of Riss & Company where they use rail substitute service (piggyback) for either, all, or part of the through movement. However, it will be permissible to use this service in those cases where highway service via Riss & Company and other carriers is not available."

Signed by Mr. L. H. Roegner, Transportation Manager.

Q. After December 19, 1956, and up to November 21, 1957, the date of Exhibit 325-H, Mr. Matthews, will you please explain in general terms what occurred with reference to this relationship and the relationship of your own office to the several plants?

A. During that period of time Armour Company's basic organization changed from one complete centralized control to decentralized control, whereby the shipping plants and other operating units were given considerably more latitude and authority to run their own part of the business under the policies and direction of the general office.

Consequently, instructions that had been issued under centralized

13,870 control prior to that time, in many cases had to be amended to fit the new concept of decentralized organization.

Q. Then, on November 21, 1957, did you send a communication to the same persons with whom you had previously communicated on this subject that had a bearing on that change in relationship?

A. I instructed one to be sent.

Q. That was a letter dated November 21, 1957, which has been marked for identification as 325-H?

A. Yes, sir.

Q. And I note that i s signed by the same D. A. Chute who is the man that you previously referred to?

A. Yes, sir.

MR. HAYS: I offer 325-H.

MR. WRIGHT: No objection.

THE COURT: It may be admitted.

(Thereupon letter 11-21-57 signed D. A. Chute to transportation and plant managers marked Defendant No. 2 (AWR) Exhibit 325-H for identification was received in evidence.)

MR. HAYS: Mr. Matthews, will you please read 325-H?

THE WITNESS: It is an inter-company communication addressed to the same plants as the others, but there are some new names in the addresses
13,871 having replaced others that were retired, or something else.

It is dated November 21, 1957, and it states:

"On May 17th, 1956, we advised you that effective immediately you were to discontinue using Riss & Company until further notice. This letter rescinds my instructions. It will be up to the local plant transportation and distribution managers to use Riss & Company at their own discretion.

"I am cautioning you that you should study the in-transit time on loads shipped by Riss & Company as they are still delivering their trailers to the Pennsylvania Railroad at East St. Louis and Chicago. Trailers are then put on flat cars moving to the Eastern destination point.

"It may be that in some instance the service they provide will not be flexible as that provided by other motor carriers operating over the road."

Signed by Mr. D. A. Chute. Copies to other interested people.

BY MR. HAYS:

Q. Now I will ask you, Mr. Matthews, as the result of that instruction, what, if any, change took place in the volume and the extent to which Riss & Company was being used by Armour & Company?

13,872 A. The developments of other carriers have a bearing on how much business any one carrier retains, but as a result of these changes in and out, the amount of business with Riss & Company today, or since that time, is rather small. I am not familiar with how much.

* * *

DIRECT EXAMINATION OF MR. C. G. DOLLOFF

BY MR. BALL

* * *

* * *

13,899 Q. Mr. Dolloff, you will recall that you testified that the disbursement of the Coleman Company to Riss and Company for transportation services was $32,900 in '51 and dropped to $12,394 in '52. Now, do you know why this drop in disbursement to Riss and Company occurred?

A. Well, there were two factors.

Q. You better answer me: Do you know?

A. Yes, sir.

Q. Will you tell the jury and the Court what the reasons were for this?

A. Well, the first factor was the $5 minimum that was put into effect by Riss and Company on February 11, 1952.

Q. This is the imposition by Riss and Company of the $5 minimum on LTL shipments? Item No. 3 on AWR Exhibit 69?

A. Yes, sir.

13,900 Q. Was there any other factor?

A. Riss and Company ceased their operations at Wichita, Kansas, in September of 1952.

Q. By that you mean, they closed the terminal that they had in Wichita, Kansas?

A. That is correct.

* * *

DIRECT EXAMINATION OF J. P. McGOVERN

BY MR. HAYS

* * *

13,934 Q. After you were asked to testify in this case or interviewed in in regard to the facts in regard to it, have you made any check of your records to determine the extent to which Riss and Company was used in, say, the years 1952 and 1952?

A. I have, sir.

Q. And what was the extent of the use of Riss and Company by your company out of Wichita?

A. On outbound shipments by Riss and Company during the year 1951, they handled 46 separate shipments. During the year 1952, there were 8 such shipments, and these were strictly shipments outbound.

Q. Where was the terminal of Riss and Company located prior to the time it was closed in September 1952?

A. Well, sir, I wasn't in Wichita at that time, but I am told by my predecessor and people in the office that Riss maintained their terminal just adjacent to our plant.

THE COURT: Well, now, this --

13,935 MR. WRIGHT: As to what he was told. We ought to find out when he did go to Wichita, and the chronology there.

MR. FLYNN: 1956.

THE COURT: 1956?

MR. HAYS: Yes.

MR. WRIGHT: That is when he first went there. I don't see how he is competent to say what happened in 1952. I haven't heard the 1956 date before.

THE COURT: Propound your question to him, Mr. Hays.

BY MR. HAYS:

Q. Well, do you know where the Riss Terminal was located in Wichita with reference to the location of the Cudahy packing plant prior to the time that the terminal was closed.

THE COURT: Do you know where it was located?

BY MR. HAYS:

Q. Do you know? Answer Yes or No.

A. Yes, sir. I know from hearsay.

THE COURT: Well, that is what we are trying to find out. He knows it from hearsay.

MR. HAYS: All right.

THE COURT: Any objection to that?

MR. WRIGHT: Yes, I think so. I would assume so.

THE COURT: If there is objection, I will sustain the objection.

13,936 BY MR. HAYS:

Q. Does Riss and Company maintain a terminal in Wichita now?

A. Yes, sir.

Q. When you seek to use the services of Riss and Company for any shipments that it is your duty to route, how do you go about it to get in touch with Riss and Company?

A. Call Oklahoma City.

Q. You have to telephone Oklahoma City?

A. Yes, sir.

Q. Is that the nearest terminal?

A. Well, that is where I have been advised to call, sir.

Q. And does Riss and Company maintain a pool or a supply of

equipment in Wichita?

A. No, sir.

Q. Tell me what volume of your shipments would be affected by this $5 minimum that has been described here? Have you any knowledge as to the current volume of small lot shipments moved out of your plant?

A. Yes, sir.

Q. What would you say would be the effect of it?

A. We had penalties on several small shipments, but I would not quote a figure.

MR. WRIGHT: I think this is quite immaterial, Your Honor, what would happen today on these shipments. This is way outside the damage
13,937 period in the case.

THE COURT: What period are you talking about?

MR. WRIGHT: He is talking about as of now.

THE COURT: Well, I don't think we should be concerned with that.

MR. HAYS: Well, let us fix time.

THE COURT: 1955, 1956, and 1957.

BY MR. HAYS:

Q. Now, Mr. McGovern, say 1956 and 1957, since you have been at Wichita?

A. Well, it would affect at that time, and it did affect many of our less than truckload shipments.

Q. In the years 1956 and 1957 to what extent have you made use of Riss and Company?

A. We used the services of Riss and Company on truckload shipments east, where we were not able to obtain the equipment from a carrier located in Wichita, and that is based in Wichita.

Q. How often did that occur approximately?

A. I would imagine we moved a load every three or four months by Riss.

* * *

DIRECT EXAMINATION OF MR. FORBES BY MR. HAYS

* * * * *

13,98[illegible] Q. In the movement of goods inbound and outbound, has your company ever used the services of Riss and Company?

A. Yes, sir, we have.

Q. How long since your company has used those services? About?

A. You mean, when did we cease using them?

Q. Did you cease using them?

A. Yes, we quit using them.

Q. When; about when?

A. At about the time that I wrote Mr. Riss, on the file that you introduced as evidence.

Q. All right. Now, you had some correspondence with Mr. Riss

13,987 and you had some correspondence regarding what general subject?

A. The general subject of an embargo on shipments 500 pounds or less at both St. Louis and Chicago.

Q. You had some correspondence in regard to that.

I will hand you Defendant No. 2, AWR Exhibit 332-A, Mr. Forbes. Look that over and tell the Jury what that is.

A. Well, the first page is a tonnage recap of the outbound tonnage from Oklahoma City that we gave Riss and Company for the year 1950.

Q. That is a letter to you from Leroy Hatfield of Riss and Company?

A. Right

THE COURT: What is the date, Mr. Hays?

BY MR. HAYS:

Q. What date is it, Mr. Forbes?

A. Dated May 28, 1951.

THE COURT: All right, I have it.

BY MR. HAYS:

Q. Now, turning to the second page of those stapled together there, in the same exhibit, No. 332-B --

THE COURT: Wait a minute. Do you have that letter?

MR. WRIGHT: I thought he was talking about the second

13,988 page of A and A is only one page.

THE COURT: One page.

MR. HAYS: Yes, A is one page.

BY MR. HAYS:

Q. No. 332-B, tell us what that is, please?

A. That is a letter from myself to Mr. Bob Riss, president of Riss and Company.

Q. The general subject of that letter was what?

A. The embargo on shipments less than 500 pounds through St. Louis and Chicago, and also a proposed $5.00 minimum charge on small shipments.

THE COURT: Excuse me. Mine are a little mixed up here. Do you have the date on that, so I can conform them?

THE WITNESS: The date of that letter is May 31.

THE COURT: All right. That is 332-B.

MR. WRIGHT: No objection to the admission of the letters. I think rather than having the witness summarize them, it might be well to offer them and just read them.

THE COURT: All right. Any objection to that?

MR. HAYS: I am glad to do that. I was just going to offer them after he had summarized them.

MR. WRIGHT: The letters are the best evidence, and it seems
13,989 to me it would save time.

THE COURT: Yes, the letters are the best evidence, and we will save that much time.

MR. HAYS: I offer 332-A through H.

THE COURT: Do you object to the admissibility of these exhibits 332-A through H?

MR. WRIGHT: No.

THE COURT: There is no need to go through them one at a time. They will be admitted into evidence.

(Whereupon Defendant No. 2 AWR Exhibits Nos. 332-A through 332-H were received in evidence.)

THE COURT: You may read them to the Jury.

(Whereupon copies of Defendant No. 2 AWR Exhibits Nos. 332-A through 332-H were passed to the Jury.)

BY MR. HAYS:

Q. Referring to Exhibit 332-A, the letter of May 28, 1951, I will ask you to state, Mr. Forbes, the occasion for the letter that was written to you? Was that in response to some inquiry?

A. In response to a request of mine, yes, sir.

Q. And what was the reason for your request? What were you talking about?

A. Well, I asked him for the volume that they had handled. Since we didn't have an individual carrier breakdown, I asked him to give me those figures, since I knew that the carrier kept them.

13,990 Q. Why did you ask for those figures?

A. Well, we periodically ask for those figures from all the carriers we do business with.

Q. Was that on the occasion when you learned of an embargo that had been placed?

A. This particular one was, yes, sir.

Q. How did you hear about that embargo and what was the situation?

A. I received a phone call from their local terminal advising me that the embargo was on.

Q. And then you inquired as to the tonnage that they had handled. Did you make objection to that embargo, Mr. Forbes?

A. Yes, I objected to it.

Q. Tell the Jury in your own words what the embargo was and what it was intended to do.

THE COURT: Before we proceed, let's find out if the witness will tell the Jury in layman's language what he means by an embargo. I am sure the Jury understands. I suppose it means a limitation on certain things they would carry or the way they would carry them. Suppose you in your own words tell the Jury what you mean by an embargo put on by Riss and Company.

13,991 THE WITNESS: Well, the embargo that was placed on by Riss and Company was a notice filed with the Interstate Commerce Commission that as of the date of their embargo, they would handle no more shipments through

St. Louis or Chicago that weighed less than 500 pounds.

THE COURT: All right, I think that is clear.

BY MR. HAYS:

Q. Refer now, if you will, a little out of order, to Exhibit 332 -- I have forgotten the letter -- the first embargo notice.

MR. AILES: E.

THE COURT: Let me have that date.

MR. HAYES: That is the one without the date, if Your Honor please. The effective date is March 15, 1951.

BY MR. HAYS:

Q. Will you please read that notice so the Jury can understand that?

THE COURT: Excuse me. Mr. Flynn, would you mind taking my group and sorting them?

MR. FLYNN: I will be glad to, Your Honor.

THE COURT: Then we can save that time. Here they are. All right.

BY MR. HAYES:

Q. Will you please read that first embargo notice so the Jury can
13,992 hear it, please, Mr. Forbes.

A. This is headed:

"Embargo Notice No. 1-51

"All Concerned:

"Public notice is hereby given that effective March 15, 1951, Riss and Company, Inc. finds it necessary because of congestion, inadequate terminal facilities and inability of connecting carriers to accept shipments tendered, causing unreasonable delay, to embargo all shipments weighing less than 500 pounds, originating at, destined to, or inter-changed with connecting line carriers at its St. Louis, Missouri terminal.

"Shipments on Government bills of lading are exempted."

Q. Signed by Mr. Hester, of Riss and Company? A. Yes, sir.

Q. Then turn to the next one, Embargo Notice No. 2.

MR. WRIGHT: I think he should read the names of the people

the copies went to.

THE COURT: All right, read that. Copies sent to various people, apparently.

THE WITNESS: Shows carbon copy to the Interstate Commerce Commission, Bureau of Motor Carriers, Washington 25, D. C.

13,993 Carbon copy to Mr. J. F. Miller, Interstate Commerce Commission, Bureau of Motor Carriers, Kansas City.

Carbon copy to All Riss Terminals.

Carbon copy to All Connecting Carriers

And carbon copy to Principal Shippers and Consignees.

MR. BALL: I think, Mr. Wright, it may be stipulated that the J. F. Miller then with the Interstate Commerce Commission was the J. F. Miller, James F. Miller who was very shortly thereafter employed as the assistant to the president of Riss and Company.

MR. WRIGHT: I know nothing about those facts. They are totally irrelevant to anything that this witness is to testify to.

MR. BALL: If he doesn't wish to make the stipulation, we will prove it otherwise.

THE COURT: All right. Very well, you may proceed.

BY MR. HAYS:

Q. Now, will you read the Embargo Notice No. 2, Mr. Forbes.

A. "Embargo Notice No. 2-51

"All Concerned:

"Public notice is hereby given that effective April 15, 1951, Riss and Company, Inc. finds it necessary because of congestion,

13,994 inadequate terminal facilities and inability of connecting carriers to accept shipments tendered, causing unreasonable delay, to embargo all shipments weighing less than 500 pounds, originating at, destined to, or interchanged with connecting line carriers at its Chicago, Illinois terminal.

"Shipments on Government bills of lading are exempted."

Q. And is that signed by M. P. Hester, Vice President of Traffic, Riss and Company?

A. Yes, sir; and it also shows carbon copies to the same as the other one.

Q. The same parties who were to have received Embargo No. 1?

A. Yes, sir.

Q. Did you ever receive a copy of that notice before it went into effect?

A. No, sir. I guess they didn't consider us a principal shipper.

THE COURT: Well, that will go out, as to the reason.

BY MR. HAYS:

Q. You did not receive a copy, then, of the notice. What was your first notice of that embargo?

13,995 A. My first notice was by phone from their local terminal.

Q. By phone from their local terminal? A. Yes.

Q. What did you then do with reference to the shipments that you had set up to move?

A. Well, it was necessary that we change the routing on all of the shipments that had been handled by Riss and Company.

Q. Now, tell me about the weight and size of your shipments, as a rule, by and large?

A. Well, basically, we are a volume shipper of small shipments.

Q. By, "small shipments," you mean approximately what poundage or what weight?

A. Well, probably an average of less than 150 pounds.

* * * * *

DIRECT EXAMINATION OF MR. ENGLISH BY MR. FLYNN

* * * * *

14,067 Q. Mr. English, did Riss and Company take any action in 1952 which affected your use of their service?

A. In the early part of 1952, they put an embargo on shipments

less than 500 pounds and a minimum of $5.00 charge -- I believe it was a $5.00 charge also at the same period.

Q. That you refer to is the $5.00 minimum on less than truckload shipments shown on AWR Exhibit 69, as being effective February 11, 1952?

A. That is correct.

* * * * *

DIRECT EXAMINATION OF MR. MALONEY BY MR. HAYS

* * * * *

14,089 Q. Are you familiar with the Riss and Company and did you at that time use the services of Riss and Company?

A. Yes, sir; we used Riss and Company quite extensively at that time.

Q. And what kind of movement?

A. Well, we used them on all types of movements, we used Riss to bring merchandise into our mail order house and in turn to take merchandise from our mail order house out to our various branches or mail order customers.

Q. When you were at Oakland, 1943 to 1950, did you have occasion -- did you also route traffic when you were at Oakland?

A. We also interlined some traffic to the West Coast by Riss and Co.

Q. Even clear out on the Pacific Ocean? A. Yes, sir.

Q. And did you continue by interline and otherwise to use Riss services when you went on up to Portland? A. Yes, sir.

DEPUTY CLERK: No. 2 Defendant AWR Exhibit No. 337 for identification.

MR. HAYS: Defendant No. 2 Exhibit 337 is a copy of a letter or circular by T. C. Hope, H-o-p-e, under date of February 22, 1952,

14,090 addressed to mail order traffic managers and regional traffic managers.

(Circular dated February 22, 1952, to Mail Order and Regional Traffic Managers from T. C. Hope, was marked Defendant No. 2 AWR Exhibit No. 337 for identification)

BY MR. HAYS:

Q. Handing you Defendant No. 2's Exhibit 337, Mr. Maloney, please state what that is.

A. Exhibit No. 337 is a communication from Mr. T. C. Hope, General Traffic Manager of Montgomery Ward and Company to the Mail Order Traffic Managers and to the Regional Traffic Managers, outlining a statement of policy.

Q. Does that statement of policy refer to Riss and Company, among other carriers? A. Yes, sir.

MR. HAYS: Defendant offers AWR Exhibit No. 337.

THE COURT: Have you read the exhibit, Mr. Wright?

MR. WRIGHT: Yes, I have read the exhibit. It is not apparent to me yet what, if any connection this witness had with it; it isn't a communication from him, he is not listed among the addressees who received it, and I don't understand what the connection is.

MR. HAYS: Just to clarify the record, Mr. Wright --

BY MR. HAYS:

Q. I notice it is addressed to Mail Order Traffic Managers and
14,091 Regional Traffic Managers; were you a Mail Order Traffic Manager or a Regional Traffic Manager at that time? A. Yes, sir.

Q. Whereabouts?

A. Portland, Oregon.

Q. Did you receive a copy of that circular? A. Yes, sir.

Q. And did it bear upon, did it outline generally the policies of the company with reference to the carriers therein named?

A. That is right.

MR. HAYS: Now defendant offers Exhibit 337.

THE COURT: Any objection?

MR. WRIGHT: No objection.

THE COURT: All right, it may be admitted.

(Defendant No. 2 AWR Exhibit No. 337 was received in evidence.)

(Mr. Hays distributed copies of the exhibit to the jury.)

BY MR. HAYS:

Q. Mr. Maloney, I will ask you to state who is T. C. Hope?

A. T. C. Hope is General Traffic Manager of Montgomery Ward.

Q. He is the man to whom you report? A. Yes, sir.

Q. And who are the persons named at the top, Messrs. Harmon, I believe, Karstens, and so on?

14,092 A. Mr. Harmon at the time of this letter was Assistant General Traffic Manager or Field Traffic Operations Manager for the company in Chicago.

Q. He then held the position that you hold now?

A. Yes, sir. Mr. Karstens was our New York Traffic Manager. Mr. Kirby was another Assistant General Traffic Manager in Chicago. Mr. Klaud was our Routing Supervisor in the home office, Administration, Traffic Department. Mr. Schmitt was an Operating Manager and previously a Traffic Manager. Mr. Sheibley is Traffic Manager of our Wardway Paint Factory.

Q. Located where?

A. Chicago Heights, Illinois. Mr. Vowels is the Traffic Manager of our Retail Pool Warehouse which supplies certain lines of merchandise to company branches all over the United States. Mr. Woods was Traffic Manager at Hummer Manufacturing Company, a company-owned plant, I believe at Springfield.

Q. Will you please read this letter, Mr. Maloney?

A. (Reading:)

"The following carriers have seen fit to burden shippers with a radical 200 pound minimum charge, which is particularly obnoxious to Wards.

"Hancock Truck Lines
Interstate Motor Freight System
Trans-American Freight Lines"

Q. Let me interrupt there for a moment. Where and what has happened to Hancock Truck Lines, if you know?

14,093 A. I understand that Hancock either went bankrupt or went broke.

Q. Go ahead.

A. (Reading:)

"There may be others serving your particular territory, and if you know of them, you should report the conditions to Mr. Kirby so that he may issue a list of such carriers. Other truck lines may be considered in the same category as the above. They would be lines such as Riss and Company, which has a $5.00 minimum charge in effect. Although the ICC has advised me that this minimum will be suspended pending an investigation, just to have the rates in effect for one moment is detrimental to shippers for it gives ideas and may encourage other truckers to act similarly.

"Unless circumstances absolutely require us to patronize carriers of these kinds, please avoid their use as we surely don't want to encourage or strengthen them. Also, it should be brought to their attention at every opportunity that such practices are unreasonable and will cause them losses of all sizes of shipments.

"It will be well to acquaint your industrial traffic friends with this situation when you have opportunities to talk with them. I feel that some are wholly unaware of such practices and the eventual effect on their transportation performance."

Signed "T. C. Hope"

14,094 Q. Now, Mr. Maloney, was this $5.00 minimum by Riss and Company ever suspended as he said he thought it would be, there in that letter, as far as you know?

A. It was never suspended, no.

Q. And it did continue on into effect; do you know for how long?

A. It continued on for several years; I am sorry, I do not know the date, sir.

Q. It was later revoked, was it?

A. It was later withdrawn, as I understand.

* * * * *

READING OF MR. ELDREDGE'S TESTIMONY

* * * * *

14,128 "Now, Mr. Eldredge, I note from this exhibit that the outbound movement of tonnage of Riss and Company, Inc.,

trucks ceased in the month of September 1952. Can you tell why this occurred?

"A. This occurred because of the closing of the Wichita office of Riss and Company."

Reading of Mr. Banks' Testimony.

* * *

14,180 "Q. Now, according to the figures that you have just given me, there has been a decided decrease in the amount of trailer load shipments that you have consigned to Riss and Company for transportation outbound through the years 1956, 1957, 1958, and as of 1959 there was none. Can you give me the reasons why your company decreased the amount of shipments over Riss and Company and increased it over Transamerican?

"A. Riss and Company does not have a terminal in St. Joseph. Therefore, it was more convenient to use a carrier that had a terminal in St. Joseph. Equipment was more readily available and it was easier to keep track of your shipments.

* * *

DIRECT EXAMINATION OF MR. DAVID B. SEELEY BY MR. FLYNN

* * *

14,197 Q. In the course of your performance of your duties for the Gardner-Denver Company, Mr. Seeley, did you become familiar with the plaintiff in this case, Riss and Company?

A. Very much so, yes, sir.

Q. Did you ever have occasion to use Riss's services?

A. We have used Riss off and on for a good many years.

Q. Did you use the services of Riss prior to 1952?

A. We did, yes.

Q. Are you familiar with the imposition of the $5 minimum charge on l.t.l. known as Item 3 on AWR Exhibit 69, occurring on February 11, 1952?

14,198 A. I recall that very well.

Q. Did it have any effect on your use of Riss's services?

A. Well, it determined us to discontinue the use of their services.

* * *

DIRECT EXAMINATION OF MR. B. M. ANGELL BY MR. BALL

14,243 Q. Will you tell the Jury and the Court your name and your home address?

A. My name is B. M. Angell, A-n-g-e-l-l; I am a resident of Indianapolis, Indiana.

Q. Now, up until 1955, what was your occupation, Mr. Angell?

A. I was vice president of Stokely-Van Camp, Inc., in charge of the transportation and other related departments.

14,244 THE COURT: Mr. Angell, will you give me the name of that company again?

THE WITNESS: Stokely-Van Camp. S-t-o-k-e-l-y hyphen V-a-n --

THE COURT: That is all right.

MR. BALL: I am sure the Court and Jury recognize Van Camp's pork and beans.

THE COURT: I used to know one of the Stokelys many years ago; at least, I met him sometime.

BY MR. BALL:

Q. Since 1955, what occurred?

A. 1955 I retired, my corporate official capacity of Stokely.

Q. But you have retained a business connection with Stokely-Van Camp to date?

A. Yes; it employs my services as executive consultant in the departments that I previously handled.

Q. Which includes transportation?

A. Among others, that's right.

Q. And you retain your familiarity with the transportation problems of Stokely-Van Camp?

A. I have.

Q. How long had you been vice president of Stokely-Van Camp Company?

A. Since April 1944.

14,245 Q. What has been your transportation experience, Mr. Angell?

A. My transportation experience dates back more than forty years, including all types of transportation, railroad -- in fact, I am president of a little railroad right now -- trucks.

Q. What is that little railroad, Mr. Angell? I think the Jury --

A. Smoky Mountain Railroad; runs from Knoxville, Tennessee to Sevierville, Tennessee; Sevierville, at which Stokely-Van Camp has a plant.

Q. Is the railroad connected with Stokely-Van Camp?

A. Stokely-Van Camp and other shippers are the stockholders of the Smoky Mountain Railroad.

Q. How many miles is this railroad, Mr. Angell?

A. Thirty miles.

THE COURT: Pretty small compared to the ones we have been talking about here.

THE WITNESS: Just as wide and just as much trouble.

BY MR. BALL:

Q. Now, do you know anything about the National Canned Goods Shippers Conference?

A. Yes. The National Canned Goods Shippers Conference is a voluntary, non-dues, non-profit organization comprising most all of the major 14,245-A canned goods shippers in the United States, including Stokely-Van Camp, Inc.

Q. That has been organized since when, Mr. Angell?

A. It was organized during the proceedings involving what is known as Ex Parte 148, which is approximately better than twenty years ago.

Q. What position have you held, if any, with the National Canned Goods Shippers Conference?

A. I have held the position of General Chairman of the Canned Goods Shippers Conference.

Q. Now, going to Stokely-Van Camp, some of your products that the Jury might know would be the pork and beans that we referred to. What are some of the other products, Mr. Angell?

A. Stokely-Van Camp has plants located throughout the United States and Canada and Hawaiian Islands. In all the variety of locations, there every

item of fruits and vegetables we pack, where grown in those areas, which I might state includes practically all of your canned fruits and vegetables, condiments, and other food items, including meat items, too. I think, overall, approximately better than 180 different items among those products.

Q. Different products, yes.

THE CLERK: Number 2 Defendant the AWR's Exhibit No. 347, for identification.

14,246

(Whereupon copy of the 1959 Annual Report of Stokely-Van Camp, Inc. was marked Defendant No. 2 AWR Exhibit No. 347, for identification.)

BY MR. BALL:

Q. I hand you, Mr. Angell, what the reporter has marked AWR Exhibit No. 347, for identification, which professes to be the Annual Report of Stokely-Van Camp, Inc. for the year 1959, and ask you if that is in fact such Annual Report?

A. That is correct.

Q. And I call your particular attention to the inner spread, and I ask you if that is a pictorial and printed description of typical products of Stokely-Van Camp?

A. That is correct.

MR. BALL: I offer AWR Exhibit 347 for identification.

THE COURT: Any objection?

MR. WRIGHT: We would like to have a copy.

MR. BALL: Yes.

THE COURT: Have you got a copy?

MR. BALL: Can I borrow your copy? Yes, fine. I would like to give the Jury some idea of the type of merchandise that is handled by Stokely-Van Camp.

(Whereupon Defendant No. 2 AWR Exhibit No. 347 was passed to the Jury.)

14,247

THE COURT: I take it there is no objection?

MR. WRIGHT: No objection.

THE COURT: What are you offering it for?

MR. BALL: What was this number?

THE COURT: No. 347 AWR.

MR. BALL: Yes, fine. I am just offering this to show the products of Stokely-Van Camp.

THE COURT: Show the products. All right, fine.

THE CLERK: Will it be received, Your Honor?

THE COURT: It may be admitted.

(Whereupon Defendant No. 2 AWR Exhibit No. 347 was received in evidence.)

MR. BALL: Now, I am just going to let the Jury take a look, because that will give the background for the next question.

THE COURT: All right.

(Whereupon a second copy of Defendant No. 2 AWR Exhibit No. 347 was passed to the Jury.)

BY MR. BALL:

Q. Now, in the list of products of Stokely-Van Camp, there are what are called frozen foods; isn't that correct?

A. That is correct.

Q. And what are some of the frozen-food foods that you merchandise at Stokely, manufacture and merchandise at Stokely-Van Camp?

13,248 A. Stokely-Van Camp packs also frozen fruits and vegetables, pies, frozen pies, and juices, including the citrus concentrates packed in Florida. It packs all the fruits and vegetables that are adaptable to freezing and preserving in that manner which we -- which Stokely-Van Camp distributes under its own label, Stokely's Finest, and one of its subsidiaries, PictSweet; and some of the items are packed under the Van Camp label, particularly those that comprises in part meats and including pies.

Q. Now, is there an organization of the packers of frozen goods, Mr. Angell?

A. Yes. There is the national organization known as the National Association of Frozen Food Packers, headquarters in Washington, D. C.

Q. Have you had any connection with the National Association of Frozen Food Packers?

A. Yes; I was Chairman of its Traffic and Transportation Committee approximately ten years, up until one year following my retirement.

Q. That would be from 1946 to 1956?

A. That's about correct, approximately so.

Q. And do you hold any position with that Committee now?

A. Other than advisory. In fact, I attended the National Convention in Chicago this past January as an adviser to its Traffic and Transportation

14,249 Committee.

Q. Do you hold even an honorary chairmanship of that Committee?

A. In substance, that is correct.

Q. Now, Mr. Angell, at what temperatures must frozen foods be transported by common carriers or other carriers?

A. Frozen foods must be produced at zero and below; it must be held at all times at zero, or below, including whether it be in transportation, warehousing or otherwise handling. In fact, some states have passed laws, including Connecticut, requiring that to qualify -- for frozen foods to qualify as top grade.

Q. Can you put them in an ordinary refrigerator at about 40 degrees temperature without spoilage?

A. As far as short duration of time, particularly for the purpose of defrosting for usage, immediate usage.

Q. But they will defrost at temperatures that high?

A. They will defrost. Most all frozen foods will defrost, starting to defrost at 20 above, some at even 10 above.

Q. Well now, if frozen foods, in the course of transportation, start to defrost, what is the effect on the quality of the food?

A. Well, it reduces the quality, and in some cases causes spoilage, a total loss.

14,250 Q. So that it would be a cause of spoilage if temperature in transportation got to be as high as 10 degrees?

A. In some cases, that would happen. Of course, 10 degrees -- a lot of it moved at that temperature before the transportation carriers provided more efficient vehicles. Ten degrees will not cause it to spoil immediately. It will in some items, though, affect the quality. Twenty degrees, though, will start spoilage pretty soon.

Q. Now, in your duties with Stokely-Van Camp, did you use common carrier truckers for transporting frozen foods?

A. Oh, yes, both common carriers and our own trucks.

Q. Who were the original movers of frozen foods?

A. Well, the original movers of frozen foods, to the extent of our operation in it was started in 1938, was the railroads; the railroads were the only ones at that time that had what was known as refrigerator cars, the ordinary two and half or three-inch insulated cars, which was thought to be the only -- I mean, the only available type of vehicle at that time.

Q. What was the refrigerant used in those railroads' cars at that time?

A. At that time it was ice and salt; it was ice with thirty per cent salt, which was supposed to bring the temperature, theoretically, down to

14,251 zero, but very seldom would it reduce it as low as 10 above.

Q. Well, did that sort of temperature prove to be satisfactory in the transportation of frozen foods?

A. Not at all. In fact, it was very hazardous and caused serious claims, both chargeable to the railroads and sometimes not even recoverable by the packer.

Q. Now, did you have occasion to concern yourself with these problems as Chairman of the Transportation and Traffic Committee of the National Association of Frozen Food Packers?

A. Yes, I did. In fact, that was one of the first programs that I broached upon with the railroads -- the railroads first and then the truck carriers -- to provide adequate and efficient refrigerated vehicles to safely transport frozen foods.

Q. What changes did that require in refrigerated vehicles --

A. Well, the first change --

Q. -- Mr. Angell.

A. -- was for the railroad cars to increase their insulation from about two and a half to three inches to seven inches, six and seven inches. It took that insulation to retain the refrigerant, refrigeration in and to keep the heat out from the outside.

14,252 Q. What form of refrigeration did you insist upon?

A. Well, in the very first, of course, you only had ice and salt. The railroads, though, they did put in operation several thousand of the heavier-insulated cars, some with fans, operated rotary off the axle, to keep the circulation of the low temperature inside, and fully protect all the frozen foods loaded therein.

Later on, though, at our insistence and request, we asked them to put in a program to build and put in service mechanical refrigerated cars, which they have up to this time put in a lot.

Q. Now, by mechanical refrigeration, you mean installing a refrigerating unit in the car?

A. Refrigerating unit, just exactly similar that you have in the home, only it takes down to a very low temperature. It will protect zero and below.

Q. Now when you said, "we insisted," a minute ago, Mr. Angell, who did you have in mind?

A. I mean, "we" -- there I was speaking on behalf of the Chairman of the National Association of Frozen Food Packers, the Transportation and Traffic Committee.

Q. Now, what devide did you use to implement your requirement adequate refrigeration? Did you --

A. We had engineers, and even the railroads' and truck carriers' engineers to make studies. We had even the Department of Agriculture at

14,253 Washington, Mr. Harold Johnson, particularly. He made experimentations to find exactly what type of equipment and what they had to do to provide the full protection to frozen foods in transit. That applied not only to railroad cars but to truck equipment.

Q. Well now, did you begin or at any time attempt to approve or disapprove specific cars or trucks or trailers?

A. We did. After the specifications were determined, with the advice of the railroads and the truck lines, carriers, we took that standard and determined every railroad car in the United States and Canada that had fully-protective equipment; and we published a directory containing those cars, identified by initials and number and ownership; and in this directory, we directed the frozen food packers and shippers to ship frozen foods only in those cars; otherwise they would have to ship at their own risk.

We did the same thing with truck vehicles, too, to the extent that the truck carriers furnished us the information of the installation, insulation and the mechanical type of refrigeration to protect it.

I might add, too, that this was not done in a day. The Canned Goods Shippers Conference met with the railroad officials or the private car-line officials that operate the refrigerated cars, met with them at all, at every 14,254 convention each year, and several times during the year. We did the same thing with the truck carriers. I would say, included practically every major truck carrier in the United States that was interested in transporting frozen foods. And there we went through the same procedure with them. And then published a directory governing the trucks, trailers identified by the company and the particular vehicle as to its insulation and device for producing the refrigeration.

Q. Well now, if you took a refrigerated trailer of the kind used for transporting meats, and put a unit such as a Thermo-King on it, would that qualify it to meet your standards?

A. I didn't catch your first statement. You say, for transporting meats?

Q. If you took a refrigerated trailer such as the kind used for transporting meats, let's say --

A. No, that wouldn't -- that wouldn't protect frozen foods at all, because meats are usually transported around 34 degrees, depending on their state; some meats you do not want to freeze and others you do.

Q. Now, what was the width of insulation, the minimum width of insulation on the refrigerated trailer that you would insist on?

14,255 A. For frozen foods?

Q. Yes, for frozen foods.

A. Six inches, we requested; some was five and a half, some seven inches.

Q. That is on the trailers to be carried with tractors across the country?

A. That is right.

Q. And from your knowledge of the practices of the industry, was it or was it not the practice of frozen foods packers to use or to give their business to equipment that was listed in your directory?

A. Well, that was the directed policy of the Traffic and Transportation Committee and directed to the members of the Association, not to use any equipment that was not included in the directories, whether it be the railroad cars or truck carriers.

Q. Now, I want to ask you a couple of questions about the operations of trailers in the frozen foods business. Can you drive a trailer from Points A and B and then re-load the frozen foods into the trailer of another tractor at Point B for completion of the journey? What problems does that present?

A. It creates the problem -- it depends a great deal upon the outside temperature, whether it is in the summer or whether it is in the winter. Whenever you refrigerate a container, whether it be a trailer or a car, you

14,256 open the door, and the outside temperature is very high, it will let the -- it will drive heat in the car. Now, you have to -- regardless of whether it is in the winter or summer, you have to take precautions to try to retain the cold air in and keep the outside hot air out; and usually, that's done by a curtain you may drop down over the trailer door, or the car door.

Q. Well now, as a shipper of frozen foods, would you ordinarily route frozen food shipments over a route that required a -- what I think the technical phrase is -- change of lading along the route, which means a transfer from one trailer to another?

A. No, we avoid it every time, if we could. It would only be in the case of an absolute emergency or no other available transportation.

Q. Can a tractor-trailer combination drop off less than a truckload of frozen foods at one point and continue on its journey; or can it pick up less than a truckload of frozen foods traffic at the beginning of a journey and handle it without loss of merchandise?

A. It can be done, but that type of operation does require the extraordinary care to retain the refrigerated state of the container, the car or the truck.

Q. Are there any --

14,257 Q. In fact, there is necessity -- you have a lot of operations of that type by small shippers and to small distributors or receivers.

Q. In other words, there are many customers, let's say of Stokely-Van Camp that require deliveries of less than a truckload of frozen foods?

A. That's right. There is a lot of them. In fact, you have more small ones than you do big ones, because the big ones are usually located where they have adequate warehousing, themselves, or they have a public warehouse in their city which will maintain zero temperature.

Q. And there are ways in which you can handle LTL traffic in frozen foods?

A. There are ways, with those precautions. In fact, it is a necessity, which we don't like, but, nevertheless, that is the business, and we have to ship it.

Q. I think you described that you could get curtains that divide the trailer into various compartments; is that correct?

A. That would help. In other words, a curtain to keep out the outside air, retain the cold air inside, is the second-best way to do it.

Q. Now, speaking of the transportation of frozen foods, I suppose that you must have speedy and reliable service?

14,258 A. It is very important, speedy and reliable, but reliable would come first.

Q. Well, what particular aspects of the frozen foods require speed of service; and what require reliability of service, Mr. Angell, if you can describe them?

A. One aspect which requires speed is the perishable nature. Regardless of what insulation and temperature that you start out with, every day, twenty-four hours, that it is in transit, changes the temperature, maybe one degree, depending on the type of installation; and that is why the quicker you get it there, the lesser hazard you run into with respect to that physical change.

Q. And what about being able to call upon transportation facilities at the time and immediately when you have a load ready to ship?

A. Well, that's very important, because you order a car or a trailer for loading frozen foods, it must be there at the time that you move it out of the warehouse, put it on the platform, and then move it into the car or the trailer. Any delay of either type of equipment could create the serious loss or damage.

Q. Now, Mr. Angell, yesterday, I read a sentence or paragraph from AWR Exhibit No. 346 to the Jury, which is the paragraph at the top of Page 4 of that Exhibit; and I hand you that paragraph, and I want to ask you a few questions of explanation about it.

14,259 The first sentence -- do you have it there?

A. Yes. The top one?

Q. The top paragraph.

"Riss & Company, Inc. has suffered the loss of frozen foods traffic to exempt carriers..."

Now, will you explain what an exempt carrier is, Mr. Angell?

A. Do I have the right page?

Q. Maybe you haven't. Here, I had better be sure.

No, you haven't. My fault.

I wonder if you could describe to the Jury what an exempt carrier is, if you know?

A. Well, an exempt carrier is a truck carrier that was transporting particular commodities, who is not made subject to the Federal law, originally known as the Motor Carrier Act of 1935. That Act then brought truck carriers under regulations similarly as railroads were brought under regulations in 1887.

But it did exempt from this Motor Carrier Act carriers that normally transported farm products, farm crops, and other articles of that nature. It was really directed to what the farmer was interested in, and to types of transportation which were not otherwise available.

Q. Now, looking again at Exhibit -- that you have in front of you --
14,260 the sentence goes on:

"...Riss & Company has suffered the loss of frozen foods traffic to exempt carriers who, because of recent decis now compete with motor common carriers unfairly."

Now, this was filed September 7, 1957. With that date in mind, are you familiar with the recent decisions referred to in that sentence?

A. Yes, I am. They are decisions, I think, which started in what is known as the Kroblin case, which --

* * * * *

14,262 MR. BALL: The first case, Kroblin, K-r-o-b-l-i-n, case,
14,263 involving dressed poultry, decided in the District Court, 113 F. Sup. 599, affirmed 212 F. 2d. 555, and certiorari denied in the United States Supreme Court October 14, 1954, 348 U. S. 836.

The Frozen Food Express case, involving frozen dressed poultry, decided in the District Court, 128 F. Sup. 374, affirmed 351 U. S. 49, on April 23, 1956.

The Home Transfer and Storage Company case, involving frozen fruits and vegetables, decided in the District Court, 141 F. Sup. 599, affirmed in the United States Supreme Court on November 5, 1956, 352 U. S. 884.

The Frozen Food Express case, second one, involving frozen eggs and cut-up vegetables in bags, decided in the District Court, 128 F. Sup. 374, and affirmed in the United States Supreme Court October 14, 1957, 355 U. S. 6.

BY MR. BALL:

Q. I ask you if I asked you to prepare this memorandum, Mr. Angell, for purposes of reference here in the Court?

A. Right.

Q. Now --

A. Did you hear me (addressed to reporter.)

Q. These cases dealt with what products could be carried by exempt carriers, did they not?

A. These cases developed what was exempted items which theretofore were considered not exempt, and resulted in exempted carriers transporting such items which prior to that time they could not transport.

14,263-A

14,264 Q. Now, did this lead to the entry of new motor carriers into the field of transporting frozen foods?

A. Yes, it created quite a large number of so-called exempt carriers, they are exempt carriers, transporting these items, which freight was previously transported by common and contract carriers regulated under the laws of the Interstate Commerce Act.

Q. Now, did these exempt carriers have to publish rates or submit their rates to the Interstate Commerce Commission?

A. Not at all, they are not subject to any regulations except the safety regulations of the Act.

Q. What, in fact, were the nature of the rates proposed by these exempt carriers?

A. Well, the nature of the rates actually applied by the exempt carriers was what it took to get the business. Normally, due to -- a lot of these exempt carriers were not reliable carriers and they usually quoted and applied rates which are a little less than common carriers.

Q. Did the entry of these exempt carriers into the frozen foods transportation field result in the diversion of traffic away from motor common carriers and railroads?

A. Substantially so; in fact, it interfered, too, with the programs of the railroads as well as the regulated truck carriers and putting in operation these mechanical refrigerator cars which we had arranged for in these meetings that I referred to with the railroad and truck yards, they quit.

14, 265 Q. Because of the new competition that had come in the field at that time?

A. That is right.

Q. Unregulated competition? A. That is right.

Q. Now, Mr. Angell, as one who has spent many years in the transportation traffic field, what are the factors that cause you to pick one carrier as against another to transport commodities for your client?

A. You mean class of carrier?

Q. Well, I am thinking of as even between carriers or between classes of carriers, either way.

A. Well, there are two factors, which one comes first depends upon the circumstances; No. 1, usually, the cost, and No. 2 is the service; but if the matter is an emergency, service would come first and cost second.

Q. By service, what do you mean, essentially?

A. Service, I mean from the carrier, receives and transports the shipment that we have, promptly, and delivers it safely without any delay.

Q. Does that include reliability of the carriers to pick it up on scheduled time when promised to deliver?

A. As to frozen foods, the reliability and safety comes first.

Q. Mr. Angell, did you ever read or hear of any newspaper or

14,266 magazine publicity adverse to Riss & Company?

A. No, I never have.

MR. BALL: Your witness.

CROSS-EXAMINATION

BY MR. WRIGHT:

Q. Mr. Ball kept asking you about exempt carriers; I think you referred to exempt carriers. It is a fact, is it not, that this agricultural exemption that you were talking about exempts commodities, not carriers, doesn't it?

A. Well, it exempts the carriers, too. Under the Act, carriers that are regulated are those that can handle items that are not exempted. Now, items that are exempted, any type of carrier can handle them; meaning by exempted, are not subject to the Act.

Q. Just tell us what the Act says, what is this exemption provision that you are talking about?

A. Well, the Act states, so far as regulating the carriers, that such regulation does not apply to the transportation of certain items, which

is farm items, livestock and some other related items, along with it. I would have to get the Act to be more specific.

Q. Well, the exemption is clearly stated in terms of commodities, isn't it?

A. Well, it states it clearly as to commodities, but it makes this clear, too, that it states it also for the carriers. Anybody can handle an
14,267 exempted item.

Q. So that applies to Riss & Company, as far as those exempt commodities are concerned, Riss & Company could handle those commodities free from regulation, just as any other common carrier could?

A. They certainly could and I think a lot of the carriers did, I mean regulated carriers did.

* * * * *

DIRECT EXAMINATION OF MR. WIRTZ BY MR. HAYS

* * * * *

14,283 Q. Are you acquainted with the service and operations of Riss & Company, and that Swift & Company used Riss' services?

A. Yes, I am.

Q. Tell us largely the character of service, the type of transportation, that you purchased from Riss & Company, and when.

A. We require refrigerated equipment, overhead rail trailers, so that we can hang our beef. They have to be mechanically refrigerated, and have four to six inches of insulation on the sides and the tops, and of course a very good operating mechanical unit to refrigerate it.

Q. From what points, in what territory to what territory, have you employed Riss?

A. We have used Riss from Fort Worth and Dallas, Texas, from
14,284 St. Joe and St. Louis, Missouri; Kansas City, Kansas; Denver, Colorado; East St. Louis, Illinois, to many points east of the Illinois-Indiana state line, and north of the line from north of Virginia up into New England.

Q. State whether or not that was largely in truckload movements or in small lot shipments.

A. Practically all truckload movements, in addition to which there were some dressed poultry movements from Oklahoma and Kansas into the same destination territory.

Q. What about the butter and dairy products?

A. Butter occasionally, yes.

Q. About how much a year did you pay to Riss & Company during the time when you were using its services extensively?

A. Approximately three-quarters of a million dollars annually.

Q. And what years were they?

A. In 1954 and '55, and prior to that time.

Q. Did your use of the Riss service begin to drop off at any given time?

A. Yes; in 1957 it began to drop off rather badly.

Q. State why.

A. Primarily because they were using Pennsylvania Railroad piggy-back service on our loads. They were missing connections at the East St. Louis gateway with the trains that would put them into the eastern seaboard the second morning from there. And of course these trains get into the railroad
14,285 yards at five and six and seven o'clock in the morning; and before they get the trailers off the flat cars, it is too late for that day's business.

Our branch houses and our customers in the New York area, which got most of that piggy-back, want their deliveries between midnight and six o'clock in the morning. And when we get the shipment in there after six, it is no good for that day's business.

Q. Did you have difficulty in the receipt of those shipments that you had ordered via Riss & Company?

A. Yes. There were many of them we had to take back because they were delayed. Many of them got in after a market decline occurred, which caused us to lose considerable amounts of money. And some of them came in off condition because they were too long in transit and were not properly refrigerated.

MR. HAYS: I will ask to have this identified.

THE DEPUTY CLERK: No. 2 Defendant the AWR's Exhibit No. 354 for identification.

(Swift & Company telegram T281-84 was marked for identification as Defendant No. 2 (AWR) Exhibit No. 354.)

THE DEPUTY CLERK: No. 2 Defendant the AWR's Exhibit No. 355 for identification.

14,286

(Swift & Company telegram T288-84 was marked for identification as Defendant No. 2 (AWR) Exhibit No. 355.)

MR. HAYS: AWR Exhibit No. 354 for identification, a copy of a telegram sent to various plants by Swift & Company pertaining to the use of Riss services. And Defendant's Exhibit No. 355, a copy of a later telegram, June 3d, 1957, sent to the same installations.

MR. AILES: May we have the date on the first one, too?

THE COURT: What is the date?

MR. HAYS: The date on the first one was May 31st, 1957.

BY MR. HAYS:

Q. I ask you, Mr. Wirtz, pursuant to the difficulties you had with Riss service, did you take any action along in the latter part of May of 1957?

A. Yes, we did.

Q. Did you communicate with your plants with reference to Riss service?

A. We did.

Q. Referring to Defendant's Exhibit No. 354, state, if you will, what that is, please.

A. That is a copy of a wire we sent to our transportation depart-

14,287

ments at Denver, Fort Worth, Dallas, Kansas City, St. Louis, and East St. Louis, telling them that "effective immediately and until further notice arrange discontinue use of Riss & Company equipment and service on perishables to eastern destinations."

MR. HAYS: The defendant offers Exhibit 354.

THE COURT: Is there any objection?

MR. WRIGHT: No objection.

THE COURT: It may be admitted.

(The telegram marked for identification as Defendant No. 2 (AWR) Exhibit No. 354 was admitted in evidence.)

(Copies of Exhibit 354 were handed to the jury.)

BY MR. HAYS:

Q. Will you please read Exhibit 354.

A. Exhibit 354 is the one I just read.

Q. Oh yes. And the number, the signature or the number of the wire, was what?

A. Symbol T281, and "84" stands for the number of our department, the telegraphic code number.

Q. What was the reason, what was the occasion, that led up to the dispatch of that telegram?

A. The numerous delays on shipments that they handled on piggy-back; the complaints that we received from our customers and our sales units on late arrivals; and, to some degree, off condition of product on arrival at destination.

14,288 Q. Had you conferred with representatives of Swift & Company on occasions before that telegram was finally sent out?

A. Oh yes -- my boss and I, all of our officials.

Q. Then what happened when that telegram went out, with reference to the availability of equipment?

A. Because of the extensive use of Riss service, we immediately felt the shortage of equipment. And within about a week after that we had to go back to the plants and tell them what we did in this next wire, and that was to --

Q. We will get to that in a moment.

You say you felt a shortage of equipment. Did Swift and Company at that time use other motor carriers in the same movements?

A. We sure did.

Q. Can you name some of the other carriers that were employed by you?

A. Safeway Truck Lines, Emory Transportation Company, Eastern Express, Spector Motor Freight, Chicago Express, and many others.

Q. When you cut off the use of Riss & Company service there, what did you do with the business that had theretofore been handled? What did you do immediately with the business that had theretofore been handled by Riss & Company?

A. We diverted to rail movement some business that we could afford to take a day longer time in transit on. And the rest of it we tried to
14, 289 give to these other carriers to the extent they were able to furnish us with equipment.

Q. What did you find out with reference to the availability of equipment by these other carriers?

A. Well, for quite a while they were quite short of equipment. Immediately we felt it because of the use we had made of Riss previously.

Q. On their shortage of equipment, you would send to them business and they would not be able to handle it? Is that it?

A. That is right.

* * * * *

Q. Handing you Exhibit 355, I will ask you state, please, what that is.

A. That is a copy of another wire sent out by our department to the same six plants on June 3d, 1957.

MR. HAYS: Defendant's Exhibit 355 is offered.

THE COURT: Is there any objection?

14,290 THE COURT: Received.

(The telegram marked for identification as Defendant No. 2 (AWR) Exhibit No. 355 accordingly was received in evidence.)

(Copies of Exhibit 355 were handed to the jury.)

BY MR. HAYS:

Q. Will you please read Exhibit 355, Mr. Wirtz.

A. That is a wire from our department to the same plants, and it reads:

"Supplementing our wire T281 of May 31st restricting the use of Riss equipment on perishables to eastern destinations, this is to advise that if truck shipping is a requirement you may use Riss if no other carrier available. Reasons are due to recent unsatisfactory service and resulting in serious complaints."

Symbol T288.

Q. Did you later make attempts to improve the service and reinstate Riss? Did you do so on any --

A. Yes. We repeatedly met with officials of Riss & Company, who felt the loss of that business and who came in to see what they could do to get it back. And repeatedly, when they were given a chance to handle it again, they went back into the same old rut. And eventually we cut them out almost completely.

Q. Can you say what the decline in the amount of freight revenues
14,291 paid to Riss & Company was as a result of this action?

A. Well, in 1959 their revenue from our company was cut to about one third of what it was.

Q. Did you say '59, or '57?

A. I am sorry -- in '57 -- to about one third of what it was prior to that time. And since that time it has dropped considerably more.

Q. I ask you, Mr. Wirtz, to state, if you will, what are the principal factors that influence your judgment as a traffic man in the selection of a carrier for the transportation of your freight.

A. Well, there are two, and they are service and cost. They go together.

* * * * *

14,292 Q. Have your ever read anything detrimental to Riss & Company in the newspapers and magazines, or in any other periodicals?

A. No, sir.

Q. Tell me, is the meat packing business competitive?

A. It is very highly competitive.

Q. And does the same competitive condition apply with reference to the other products you have described to the jury here in which you deal?

A. Absolutely.

Q. When a delay occurs in the arrival, or is about to occur, in the arrival of a given shipment, state, if you will, what is the importance, if any, of notification of the expected arrival or of the delay.

A. Most of our customers are not at all interested in what our problems are or what the carriers' problems are in getting meat or other items

delivered to them. When they want them on a certain day at a certain hour, they expect them to be there.

When a shipment is delayed in transit, we ask the carriers to notify us at the time it is delayed so that we have an opportunity to go to our customer and tell him that instead of this load coming in Tuesday when it is due, we found out it has been delayed for one reason or other, and
14,293 instead it won't be in until two o'clock Tuesday afternoon or Wednesday morning.

When we can do that, the customer will usually wait for it to come in, depending on his market conditions. But if we can't tell him anything about the load and when it may now be expected, he will usually go to our competitor right next door to get his meat, and we wind up with a load of product that we have to resell, that once was sold.

Q. I will ask you what your experience was with receipt of notice of delays when your shipments were handled piggy-back east of St. Louis.

A. It was very bad with respect to Riss & Company during that period.

Q. Is it possible for Riss & Company to know when a delay is going to occur?

THE COURT: Now let's don't get into possibilities. If he knows, all right. But we don't want to speculate any more than we have to.

BY MR. HAYS:

Q. Can Riss notify consignees as to delays that occur when its trailers are being handled on the railroad?

A. It certainly should. We get them on our railroad cars.

Q. What has been your experience with Riss & Company in the
14,294 handling of claims for losses or damage to goods in transit?

A. Well it has been very bad during the years '56 and '57, I believe mainly due to the use of piggy-backing on their part. We piled up some nine claims here that have taken about three years to settle with Riss. And in April last year I personally had to take a trip to their Kansas City office to visit with their claims people and get them straightened out. Those are all cleared up now except one which is still pending on a 1957 shipment.

MR. HAYS: You may cross-examine.

CROSS EXAMINATION

BY MR. WRIGHT:

Q. Mr. Wirtz, with reference to these delays that you say occurred in the delivery of meat and this piggy-back service that the Pennsylvania Railroad was conducting with Riss & Company, how were those complaints about delays handled?

A. To us or to Riss & Company?

Q. Well, they first come to your attention. What was the procedure? You say you had two classes of customer there. One is your own branch; is that right?

A. That is right.

Q. And the other would be an outside customer.

A. Yes.

Q. Let's take it if it was a complaint from the outside customer.

14,295. Where does that go? To whom does he complain?

A. It comes right in to me, when the shipment isn't delivered to him when it has been expected. It will come either through our department in New York, who contact him personally, or by telephone in to my sales department, or direct to me.

Q. What kind of a record is made of it when it comes in?

A. Oh, we generally have wires, if it takes occasion to wire one of the plants to try to find it out there; or just our notations when we call Riss & Company as to who the people are that we can talk to.

Q. You do make a written record, or somebody does, doesn't he, when a complaint comes in about a delay of that kind?

A. Yes, sir.

Q. And you also, I suppose, make some kind of a record of what you did about it, don't you?

A. Yes.

Q. Where do you keep those records? In Chicago, or at the branch?

A. Most of them in Chicago.

Q. And those records, I take it, would show you, would they not, the extent to which any delay might be attributable to something the Pennsylvania Railroad might have done or not done, as distinguished from Riss & Company? Is that correct?

14,296 A. They should, yes.

Q. And of course it is possible, isn't it, in a situation of that kind, that the delays complained about might be delays which were the fault of the Pennsylvania Railroad, rather than of Riss & Company? Isn't that correct?

THE COURT: Well, anything is possible. I make the same comment. The records I think would be the best evidence, if they have any records.

BY MR. WRIGHT:

Q. Well, you have records which would show that, wouldn't they?

A. I have no records prior to 1958. We destroy all of them.

Q. You destroyed the records which would tell you the extent to which these 57 delays that you say were the occasion for this notice here might have been or might not have been caused by the Pennsylvania Railroad?

A. Yes, sir. The individual records have been destroyed. There are few available in the form of claims that have since been paid and have been destroyed. I have one here that is still pending, and I have been able to locate these wires here that we managed to keep.

Q. As I understand it, you say some of these delays were caused because a shipment wasn't turned over, put on the Pennsylvania Railroad flat car at the time that it was supposed to be there?

14,297 A. In time to make the train at St. Louis, yes, sir.

Q. And where would you get those reports which would tell you what the precise cause of the delay was from? Do you have anybody in the yard in St. Louis to tell you what happened there?

A. No, sir. We deal with the railroad or with Riss & Company to learn those things.

Q. You get that information either from the railroad or from Riss & Company? Is that right?

A. That is correct.

Q. And you don't have any of those records that you got from the railroad or Riss & Company which would enable anyone to see what was said about the delay by the carriers?

A. I have none of them prior to 1958. I have some since that time. But the ones prior to that have been thrown away.

Q. Those are all gone. Who in your organization would know now, would have the best knowledge of what the contents were?

A. I would.

Q. You recall now, do you, what was said in connection with these, what those records said?

A. Not in specific detail, no.

Q. How many were there during the year 1957?

14,298 A. Oh, I am only going from memory. I will say there were 40 or 50 of them.

Q. Do you remember where they were?

A. Where they were?

Q. Yes, the points bound.

A. Mainly in East St. Louis.

Q. I am talking about the delivery points.

A. New York, Boston, Philadelphia.

Q. Well, how many of those were your own plants?

A. Possibly 50 per cent of them.

Q. About 50 per cent were your own plants?

A. Yes, sir.

Q. Can you tell me now what if anything those records showed as to the extent to which the delay might have been caused by something the Pennsylvania Railroad did or did not do?

A. Well, I would say half of them could be delays attributed to Pennsylvania Railroad service, once they got on the train.

Q. And the records themselves would be the best evidence of that?

A. Oh, absolutely.

Q. You say those are all gone?

A. That's right.

MR. WRIGHT: I don't think we have any more questions.

REDIRECT EXAMINATION

BY MR. HAYS:

14,299 Q. Mr. Wirtz, did Swift and Company ever instruct Riss to put its semi-trailers on flat cars to move them piggy-back?

A. No, sir. We specifically asked them not to.

Q. When you made arrangements with Riss & Company to move your goods from, say, Fort Worth, Texas to New York City, was there any contractual relationship between you and any railroad, or was that with Riss & Company alone?

A. It was strictly on a motor bill of lading with Riss & Company.

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DIRECT EXAMINATION OF ORAL E. HORTON BY MR. FLYNN

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14,307 Q. Are you familiar with the $5 minimum charge that was imposed by Riss in 1952, shown on AWR Exhibit 69?

A. Yes, sir.

Q. Did that affect your use of Riss?

A. Definitely.

Q. Would you answer, Mr. Horton, because your nod won't get on the record.

A. I said "definitely."

Q. It definitely did. In what way did that affect it?

A. Well, in the smaller shipments to our dealers, it would make a hardship on some of our dealers, smaller dealers, to pay the $5 minimum, that the others wouldn't charge, that the other regular truck lines wouldn't charge.

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DIRECT EXAMINATION OF MR. DOLLAR BY MR. FLYNN

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14,327 Q. Have you ever had occasion to route traffic over the lines of Riss & Company?

A. Yes, I have.

Q. During what period was that?

A. That would be in the early '50's.

Q. Was your company's volume about the same then as it is now?

A. No, sir.

Q. What was it at that time?

A. It was, oh, 250,000 pounds a year, compared to over a million pounds now.

Q. Was the size of the shipment any different at that time?

A. Yes, they were smaller.

Q. About what did they run in the early 50's?

A. Oh, from 100 pounds to 5,000 at the most.

Q. In the period 1950-1951 did you suggest to your customers that they route by Riss?

A. No.

Q. In '50-'51?

A. Not in '50 and '51, no. It was in '52.

Q. Did you ever suggest that they route by Riss?

A. Yes, I have; in '52 and '53.

Q. Was that to any particular place?

14,328 A. Denver, Colorado, mostly.

Q. Why was that suggested, that they route Riss to Denver then?

A. At that time Riss was the only direct line out of Tulsa to Denver.

Q. Are you familiar with the $5.00 minimum charge that was imposed by Riss & Company February 11, 1952, as shown on AWR Exhibit 69?

A. Yes, I am.

Q. Did that have any effect on your suggestion as to the use of Riss?

A. Yes, it did. We suggested to our customers not to use it if they didn't have $5.00 worth, or more.

Q. And did you honor routings via Riss?

A. Only to Denver.

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DIRECT EXAMINATION OF MR. CRUSE BY MR. FLYNN

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14,336 Q. Were you shipping beans by Riss early in 1954?

A. Yes, sir.

Q. Do you recall a shipment of beans from Denver to Dallas, Texas, around the first of February, 1954?

A. Yes.

Q. Did that particular shipment result in a claim?

14,337 A. Yes. We suffered a loss through what we construed to be the carrier's negligence, and filed a claim to recoup the loss from the carrier.

Q. Would you state the circumstances that gave rise to that claim?

A. Our customer was in need of a rush order of beans and they called us and asked us if we could deliver beans by a specified date. As I recall, it was a Monday. I told them it would depend on the carrier, and so we called the transportation terminal in Denver there, Riss & Company. We talked to their terminal manager, and he told me that they had equipment available and would pick the load up the following morning.

Q. Was that the usual way that you secured transportation?

A. Yes. We would cut the bill of ladings in the Denver office and then would issue a delivery order, and they would have one of their street men, one of their solicitors would come down and pick up the bill of lading, and the delivery order, and then send it out to the country shipping station with the truckdriver.

Q. Was it your understanding that the carriers would -- that the motor carriers would maintain equipment in Denver for hauling beans?

A. We understood that there were times that equipment was short, and that

14,338 was the reason that I specifically called the terminal manager to see if equipment was available, because they didn't have too many trucks going into the Dallas area, or sometimes one or two a day was all they would have available.

Q. And what happened when you called him to find out if the equipment was available?

A. He told me that the equipment was available and that the beans would load at Eaton, Colorado, the following morning.

Q. Were you subsequently advised by the customer that those beans had not arrived?

A. Yes, I was advised several times, and I think when they didn't get down there late Monday, why, he called and asked where they were and I called the terminal and they attempted to trace the beans.

Q. Did you get a report from the terminal of Riss & Company?

A. Yes, they even gave me the trailer number and said that they were held up in Oklahoma City, that they would be delivered the following day.

Q. Did you subsequently receive any communication from the loading point at Eaton?

A. Yes, several days later I had occasion to talk to the shipper and he advised me that the load had never been picked up, and then I called
14,339. the terminal manager, and they sent the equipment out and picked the beans up and delivered them real prompt after they did pick them up. They made good time.

Q. Was there any loss due to deterioration on that shipment?

A. No, it was the market loss. Beans fluctuate in value on the market, and unfortunately when the beans got down there, why, there was $150-some variation in the market price to the customer.

Q. Up or down?

A. Down. You never hear when they go up.

The customer deducted the $150.00 off of our invoice, and I in turn filed a claim with Riss & Company.

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READING OF MR. DANNEVIK'S TESTIMONY BY MR. BALL

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14,383 "(Reading) Q. At the time you purchased these units listed on exhibit 5 did you have drivers employed to operate them?

A. No, sir. Can I give you an explanation further on that?

Q. Yes, please do."

This again refers to this change-over, Item 1.

"(Reading) A. That was a major problem. Prior to the acquisition of this new equipment we operated what is

'called single-man trucks, there was one man on a truck and he drove the ten hours that he was permitted under Interstate Commerce Commission regulations and he took eight hours rest. These trucks "were all sleepers which
14,384 required two men on a truck, one sleeping and one driving And I believe that our average owner-operator fleet for quite a period of time was about four to five hundred pieces of equipment but that really meant just approximately four or five hundred drivers, whereas the placing into operation of almost five hundred 2-man operated sleeper trucks meant that we had to employ a thousand men, so even if all the owner-operators had stayed with us after we cancelled the leases on their equipment to make room for the new equipment, we would have had to recruit at least 500 men. Over and above that the union contract provides that the driver has a seniority independent of his equipment. In other words, he is an employee as well as the owner of a piece of equipment which he leases to you, so that he could assert that seniority in maintaining a position on any of the seniority boards. Some of them disposed of their tractors or gave them to somebody else to operate for another company and asserted that seniority that they held as a driver and took a position on one of our new trucks. Many of them felt that it would be better for them to take their truck elsewhere and work it for somebody else. I think the mortality rate during that transition period was about 50 percent, we retained about 50 percent of the
14,385 leased operators that we had had prior to that time so that meant that we started into a recruiting program of about 750 men and we couldn't get the trucks into operation until we had drivers for them and there was some delay encountered and some confusion during the latter part of 1954 with respect to that, too. So even though some of this equipment may have been delivered earlier in the middle of 1954, it could

conceivably happen that some of it wouldn't actually go into operation until January first, and I also attempted to avoid licensing any equipment that I didn't feel like I was going to be able to use because I didn't want to waste the license fee money on a unit that would be parked in the yard all the time."

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READING OF MR. ROBERT B. RISS' TESTIMONY BY MR. BALL

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14,392 "(Reading) Q. Mr. Riss, do your overhaul facilities have any bearing upon your decision as to where you base your tractors?

A. Yes, sir, they do, and that was our -- one of our handicaps in 1954. Since that time we have tried to build facilities to suit the operation, but in 1954 we had facilities only in Kansas City, our own facilities, company-owned facilities, and were at that time constructing facilities at Oklahoma City.

Q. Where do you have overhaul facilities now?

A. Where?

Q. Yes.

A. We have company facilities at -- oh, I beg your pardon, we had two others, one in Louisville and one in Trenton. At the present time we have facilities in Chicago,

14,393 Cleveland, Oklahoma City, Trenton, Louisville, and have facilities at Jersey City which at the moment are not completely satisfactory, but they are facilities, and St. Louis -- did I say St. Louis?"

* * * * *

DIRECT EXAMINATION OF MR. GENTILE BY MR. HAYS

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14,402 Q. And can you say to what volume that was built up?

A. I would say that Riss & Company became very prominent in Monsanto as a result of the nice job that they started to do with this benzyl chloride movement; and before it was over, I would say that Riss handled about 5,000,000 pounds of Monsanto's business, all over the -- where they could serve us, in and out.

Q. Now, did the good quality of that service continue?

A. Oh, it did for a while, yes, sir.

Q. You said 5,000,000 pounds.

A. Per month.

Q. Per month?

A. Yes, sir.

Q. It continued for a while. Can you say when it began to change, if it did?

A. Well, along about 1956 is when -- of course, any carrier has problems; but they began to fall down quite a bit by mid-1956; why, we were having quite a bit of trouble with Riss' service, delays in transit; and since it was my responsibility also in handling the routing to answer complaints, we were getting quite a few complaints from our customers and our sales-people about Riss' delay in transit, . and so forth.

One of the other things we noticed, and which became quite burdensome to us, is that we would tender LTL shipments to certain points

14,403 where they might have served them last week, well, today, they didn't serve them any more; for some reason, they were turned down.

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CROSS-EXAMINATION OF MR. EMERY , BY MR. WRIGHT

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14,427 MR. WRIGHT: We have no further questions.

THE COURT: I want to ask you a question. How many people are in St. Joseph, what is the population of your city, town?

THE WITNESS: I believe the 1960 census made it around 77,000.

14,428 THE COURT: Do you have any principal industries there, manufacturing companies?

THE WITNESS: Yes, very definitely, livestock is a very important industry there, it accounts for some 20% of our working population. And we have packing plants there, Armour, Swift, and two local plants, Dougdale and Sites, and they furnish a tremendous amount of dressed meats for truck shipment.

THE COURT: How far is St. Joseph from St. Louis, is it west of St. Louis?

THE WITNESS: Yes. It is actually north of Kansas City.

THE COURT: Is it on a road that is travelled, has a lot of traffic, going east and west?

THE WITNESS: Yes. Highway 36 is a very highly travelled highway, extending generally from Indianapolis to Denver.

THE COURT: Approximately how many trucking companies go through your town, do you know? Or use that highway?

THE WITNESS: If I may, I would like to break --

THE COURT: I asked you a question. Approximately how many?

THE WITNESS: Well, totally, some 400.

THE COURT: Some of the largest, I take it, in the country; is that correct?

THE WITNESS: That is right.

THE COURT: Out of those 400, how many maintain terminals in your

14,429 town?

THE WITNESS: If I may, I would like to --

THE COURT: I asked you a question. You can answer it, if you know.

THE WITNESS: Well, you are going to get the wrong idea from it.

THE COURT: I asked you a question.

MR. BALL: Your Honor --

THE COURT: Just a minute, I am questioning the witness.

THE WITNESS: There are some 16.

THE COURT: How many trucking companies out of the 400 maintain terminals in your city?

THE WITNESS: Some 16.

THE COURT: That is all.

REDIRECT EXAMINATION

BY MR. FLYNN:

Q. I believe you had some explanation of the fact that 400 trucking companies go through your town. How many offer services to St. Joe?

A. Well, most all of them do; but where the number is off is that they are livestock truckers who are individual truckers bringing livestock into St. Joseph. Of the category that we are here speaking of, there are some 36 carriers of whom about 16 have terminals.

Q. So that there are 36 general commodity carriers, not 400?

14,430 A. That is correct, but what makes the 400 is the number of livestock truckers who have no relation to this kind of an operation.

Q. They are bringing in live cattle?

A. That is right. About 90% of the cattle is now brought in by truck.

Q. Mr. Emery, during the period that Trans-American had temporary rights, hadn't been granted permanent authority, did they maintain a terminal in St. Joe?

A. Yes, they operated with the old Williams terminal.

Q. So that from the time they were granted temporary rights, they were maintaining or offering terminal service there?

A. That is correct.

MR. FLYNN: No further questions.

MR. BALL: May I approach the bench, Your Honor?

(Mr. Ball and Mr. Wright approached the bench:)

MR. BALL: Repeatedly during the cross-examination of Mr. Riss on the stand and other plaintiff's witnesses, the witness was protected by this Court and permitted to make an explanation of their answers when they indicated a desire to make the explanation. I regard it as highly prejudicial, the action of this Court in forbidding this witness to give an explanation, entirely contrary to the action taken.

THE COURT: I asked the direct question -- just a minute, stay here, if you don't mind. I asked a direct question and I expected a direct

14,431 answer. Now, if you are indicating that the Court has been unfair to your witness --

MR. BALL: I am so indicating.

THE COURT: Now, I want to put this on the record; that this Court has asked very few questions, he is entitled to ask any question the Court thinks is pertinent in the matter and, for the record, I think very little of the testimony of this witness. I think that out of 400 truckers that go through this town --

MR. BALL: Thirty-five over the road trucks.

THE COURT: Thirty-five, that didn't impress me one bit and I intend to keep on asking questions in the interest of justice and to develop any facts I think this jury is entitled to, and neither you nor anyone else can stop me.

MR. BALL: The only think I was objecting to was your refusal to let this witness explain his answer.

THE COURT: I will let him explain, all I can use is the facts.

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DIRECT EXAMINATION OF MR. CLEMENT BY MR. WHEELER

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14,559 Q. Did you make extensive use of their services?

A. We started late in 1955, and we used them in our Dallas location up to about 1957, when we had to discontinue using them. During that period we shipped approximately four million pounds out of our Dallas plant via Riss to Denver, Colorado; St. Joe, Missouri; St. Louis, Missouri; and Kansas City, Missouri, areas.

We used them also from 1956 to 1958, approximately a 24-25-month period, for a plant-to-plant movement from Indianapolis to Dallas, Texas on shoe polish. That movement amounted to about a million three hundred thousand pounds.

Q. Had their service been satisfactory, would you have made more extensive use of Riss facilities?

A. Yes, we would have, because in the operation of our food business it requires a great deal of shipments; and a great deal of shipments requires a lot of trucks to come and pick up.

If you can find a trucker who has broad operating authority and therefore can handle a great number of your shipments, you minimize the number of trucks that call on your plant, which is a very desirable objective. Riss' authority was broad enough to promise that sort of an arrangement; but, unfortunately, the service didn't live up to it and we were forced to discontinue using them.

Q. Can you tell us a little more in detail about your experience

14,560 with Riss?

A. We started late in 1955 down at Dallas, and complaints started to come in from my district traffic managers. We have district traffic managers at all of our plants who report to me. And while they complained of the service, I did not immediately discontinue Riss, but rather investigated it. Their complaints ranged anything from having complaints from customers at the delivery end, to having trouble with the pickups at the plant origin point.

We never immediately discontinue a carrier when we get those types of complaints, because if we did we would just be changing carriers every couple of weeks. Instead, we investigate them very thoroughly. The usual result is that the carrier will come back, say he has investigated it and he has cleared up the complaint, and we should not expect any further trouble. And we continue along with the carrier. It is rather a drawn-out process before we are fully convinced that the service isn't good and we discontinue it.

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READING OF DEPOSITION OF RICHARD RISS BY MR. BALL

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14,614 MR. BALL: I am offering only the admissions made in December of '54 as to lack of knowledge at that time.

THE COURT: All right.

MR. BALL: This should be page 16, line 7.

First, I might say that I will identify the various volumes of this deposition.

This was taken December 6, 1954.

Does the Court have the deposition before it?

THE COURT: I have it.

MR. BALL (Reading):

"Q. What are Mr. Dannevik's duties? What have they been in this period of time since 1950?

"A. Well, he is the executive vice-president. He has first to do with all department heads. They all report to him.

"Q. The president -- is he the chief executive officer in the line of command?

"A. Yes.

"Q. And is his authority general over the activities of the company? Does he supervise all aspects of its activities?

14,615 "A. Yes."

Turn to page 27, line 22:

"Q. Do you know what rate conferences or committees Riss and Company does participate in?

"A. No, I don't. I don't know. We're a member of several bureaus, but I don't know who they are, where they are.

"Q. I assume that Mr. Reardon or Mr. Dannevik" --

Well, I think that's all of that passage. Then turn to page 37.

MR. WRIGHT: I think the question and answer should be finished, Your Honor.

THE COURT: All right, you may finish it.

MR. BALL: All right (reading):

"Q. I assume Mr. Reardon or Dannevik might know the answer to that?

"A. Yes."

MR. BALL: Is that sufficient, Mr. Wright?

MR. WRIGHT: Yes.

THE COURT: All right.

MR. BALL: Now, page 37, line 10:

"Q. Take the present, current year, Mr. Riss, the year 1954. Have you had any outstanding bank loans during that period?

14,616 "A. I think there was some time of the year. I don't know if they have been paid off or not.

"Q. Do you recall approximately how much it was?

"A. I think it was only a small amount. $500,000 I think it was, but I'm not sure.

"Q. Was that creditor one bank or a number of banks?

"A. I'm sure it was one bank.

"Q. Do you know or recall the name of the bank?

"A. I believe it was the City National Bank of Kansas City.

"Q. Ever at any time since 1950 in your present recollection has the company had bank loans outstanding in excess of the amount you just mentioned -- $500,000?

"A. Yes, I'm sure that there was a time that we had I think it was $900,000. I'm not sure about that figure. But it strikes me about what it was.

"Q. What person in your organization was primarily responsible for financial arrangements of that kind, Mr. Riss?

"A. Well, it would be the President and the officers."

Now turn to page 57, line 17:

14,617 "Q. In the year 1954, has Transport Manufacturing Equipment Company ever borrowed any money from Riss and Company?

"A. I don't know. It might have. It might not. I don't know.

"Q. Has it ever in the past borrowed money from Riss and Company?

"A. Yes, I am sure they have.

"Q. Can you recall when those loans were made?

"A. It could have happened at any time. I don't know. I can't tell you that.

"Q. Do you recall the amount of those loans?

"A. No.

"Q. Do you recall why that indebtedness arose -- why the loan was made?

"A. No, I cannot tell you why any loan was made. Possibly they had need of money.

"Q. What would they need money for?

"A. Various things. I can't tell you. I just don't know. You asked me a question and I don't know.

"Q. Who in Riss and Company would know about those arrangements?

"A. I imagine the officers.

"Q. Which ones?

14,618 "A. Well, any of the top officers would know.

"Q. Would your son know?

"A. I would imagine he would. I think he does.

"Q. Would the treasurer know?

"A. Yes, I am sure.

"Q. Would Mr. Dannevik know anything about it?

"A. He should."

Turn to page 59, line 23:

And I am not going to read the lawyers' repetition of the last answer, and start with the full sentence:

"Q. Apart from the indebtedness that you have described of the Transport Manufacturing Equipment Company owing to persons from whom it purchases equipment, do you know whether it has any other indebtedness outstanding in 1954?

"A. I don't know of any. I imagine they have. The people they trade with -- there is always indebtedness or different things, you know.

"Q. Does the company have any bank loans of any kind?

"A. I don't believe they do, but I don't know. I don't think so. They might have some bank loans on equipment, but I just couldn't tell you. I don't know.

Now drop down to line 18:

14,619 "Q. Mr. Riss, before I pass on to another subject, a few more questions about these leases. Referring to the terminals that you told us were owned by the Transportation Manufacturing Equipment Company, were any of those terminals ever owned by Riss and Company?

"A. I don't recall. There might have been one in Denver, yes.

"Q. Was that transferred by Riss and Company at some time to the Transport Manufacturing Equipment Company?

"A. Sold to them at some time, but I don't recall. It may not even be so. I don't know. "

Then turn to page 62, line 23:

"Q. Was there ever a time in the history of Riss and Company, Mr. Riss, when you negotiated any leases between Riss and Company and the Transport Manufacturing Equipment Company?

"A. I couldn't say I negotiated leases, no.

"Q. Did you participate in any way in the transactions that led to a lease?

"A. Yes.

"Q. Am I to understand from your previous testimony it is your testimony that is no longer true? At least you don't participate in the same degree you did at one time, is that right?

14,620 "A. That is correct.

"Q. Now, can you tell us generally when it was that you participated yourself in those transactions more than you do now?

"A. Oh, years ago, when I was president of the company."

Now turn to 68, line 2:

"Q. What person in the management is primarily responsible for insurance matters, if there is one person who is responsible?"

MR. BALL: Am I turning too fast, if the Court please? 68, line 2.

"Q. What person in the management is primarily responsible for insurance matters, if there is one person who is responsible?

"A. I don't know who. It probably goes through Dannevik. I don't know.

"Q. Who would have handled it before Dannevik?

"A. I imagine Powell."

Now turn over to the next page, 69, line 4:

"Q. Does Riss and Company keep records and show who its insurers have been in the past? Do you have those old

policies and things of that kind in the file?

14, 621 "A. I don't know if those records are kept or not.

"Q. What policy do you follow about keeping records, Mr. Riss. There are certain regulations of the Interstate Commerce Commission. I assume you comply with those. But do you have any policy apart from that, about what records to keep and what ones to destroy?

"A. I don't know what policy the boys are using now. I know it has been our custom to keep all records necessary. We operate under the instructions of the Interstate Commerce Commission -- and other records. But what they are and what the workings are of them, I don't know.

"Q. Do you recall what your policy was when you were the chief executive officer?

"A. Well, we kept records, of course, but where those records are filed at this time and what they were exactly, I cannot tell you."

* * * * *

14, 622 "Q. Do you keep all of your records in your office in Kansas City, Mr. Riss?

"A. I am sure they are."

* * * * *

"Q. Mr. Riss, paragraph 12 of the complaint in this case alleges, among other things: 'Riss operates in excess of 800 truck units and has over 2, 000 employees.' What do I understand the words 'truck units' to describe? What is your understanding, in other words?

"A. Well, truck units is -- Truck and trailer would be a unit.

"Q. Would be a unit?

"A. Yes.

"Q. Now, directing your attention to the year 1950, can

you tell us how many truck units Riss was using in its business in that year?

"A. No, I cannot. I don't recall.

"Q. Would you have records that would show how many truck units you were using in that year?

14,623 "A. Oh, I imagine there's truck records. There's records that show, because we hire a lot of extra trucks. I don't know. I imagine there's records.

"Q. Is there anyone else in your organization besides yourself who would know what that figure was in 1950?

"A. I imagine the auditing department would know.

"Q. The auditor?

"A. The auditing department.

"Q. The auditing department?

"A. Yes.

"Q. Now, can you tell us how many truck units you were using in your business in 1951?

"A. No, I don't -- I couldn't tell you in any year how many units we used.

"Q. I take it from your last answer that you would make the same answer if I asked you the same questions about the years 1952 and 1953? Is that correct?

"A. That's correct."

Now turn to page 94, line 7:

"Q. Mr. Riss, when you made these lease arrangements with an owner-operator in 1950, what steps, if any, did you take to determine whether the driver of the tractor was qualified to

14,624 drive?

"A. Oh, as I remember, they had to have physical examinations.

"Q. Who gave them physical examinations?

"A. Doctors.

"Q. Who employed those doctors?

"A. I don't recall. I think in some cases we paid for it; in some cases the drivers had to furnish it.

"Q. Did Riss and Company establish any standards or requirements as to what those physical examinations should be?

"A. I think there is a standard established by the Interstate Commerce Commission which we have to follow.

"Q. Did Riss and Company issue any written instructions or written standards with respect to those examinations?

"A. I think there are printed forms.

"Q. Printed forms that Riss and Company --

"A. I don't know if they were a form submitted by the Interstate Commerce Commission or our form. I couldn't tell you.

"Q. The answers you have given me with respect to the physical qualifications of the operators apply to the period of

14, 625 time since 1950 also?

"A. Yes.

"Q. Now, apart from these physical examinations, what else did you do to determine whether the driver was qualified, Mr. Riss?

"A. Oh, I wouldn't know what procedure they go through. I imagine they are checked for the years of experience, time they have driven trucks, physical examination. I don't know what all the routine they go through. I don't personally give those.

"Q. Who in Riss and Company would be in charge of that, or was in charge in 1950?

"A. That would probably go through our safety department.

"Q. Who is the head of the safety department?

"A. I cannot tell you. I don't know who is head of it."

* * * * *

"Q. Under what one of the top executives does the safety

department operate?

"A. That would all come under Dannevik, I am sure."

14, 626 MR. BALL: Is that the one you wanted, Mr. Wright?

MR. WRIGHT: Yes.

MR. BALL: Turn to page 97, line 18:

"Q. Now, what if anything did you do in the case of these owner-operators from whom you leased these tractors to make sure that the drivers of the tractors kept a proper log of their activities?

"A. There are logs that they keep. It is a regulation of the ICC.

"Q. Did you supply them with the logs or did they supply their own logs?

"A. I couldn't tell you. I don't know. I think we supplied them, but I am not sure.

"Q. What did Riss and Company do to determine whether they were properly keeping the logs? Did you do anything?

"A. I don't know. As I say, I don't know that. I imagine they are checked.

"Q. Did you personally ever issue any instructions as to what should be done in that respect?

"A. No.

"Q. Did you ever make any investigation to find out what your subordinates were doing?

"A. No.

Turn now to page 153, line 3:

14, 627 "Has there been a decrease in the number of the employees of Riss and Company since January 1, 1954?

"A. Yes.

"Q. How large has that decrease been?

"A. I cannot tell you exactly. I don't know.

"Q. Can you give me any estimate of its size?

"A. No. I imagine it has decreased some with the decreases in business, but I can't tell you .

"Q. Do you know whether there has been a reduction since January 1, 1954, as compared with the year 1953 in the number of truck units which Riss and Company has been operating?

"A. I believe there has been.

"Q. Can you give us an approximation as to the amount of that decrease?

"A. No, I cannot."

Turn to page 154, line 9:

"Q. Do you know whether in the first ten months of 1954 there has been a decrease in your gross revenue from intrastate operations as compared with the first ten months of 1953?

"A. No, I wouldn't know that figure.

"Q. Do you have any general idea as to whether there has been any decrease in your intrastate operations in 1954 as

14, 628 compared with those operations in 1953?

"A. None that were called to my attention.

"Q. If there has been such a decrease, no one has said anything to you about it?

"A. That is correct.

* * * * *

"Q. Directing your attention again to explosives, ammunition, do you know whether Riss and Company is carrying explosives and ammunition in 1954 over all of the routes which it was carrying those commodities in 1953?

"A. Well, no, I couldn't answer that question, if they are carried over all the routes or not. I don't know. It would be a matter of record if any routes were omitted, but I don't recall any.

14, 629 "Q. You mean so far as you know they are carrying ammunition and explosives in 1954 over the same routes that they were

in 1953, is that right?

"A. I repeat, I don't know. I just don't know -- nothing of major importance -- I am sure I would have heard about it."

MR. BALL: Turn over to 160, line 16.

"Q. What steps if any does Riss and Company take to determine whether its drivers, its personnel generally, are complying with the regulations of the Interstate Commerce Commission with respect to the hours of work, hours of continuous driving?

"A. I don't know what the procedures are.

"Q. Does Riss and Company do anything to make sure those regulations are complied with?

"A. I am very sure they do.

"Q. Can you tell us anything that they do?

"A. No, I cannot. "

MR. WRIGHT: I think the preceding question and answer on page 160, the question and answer preceding where Mr. Ball started, should be read.

THE COURT: All right.

MR. BALL: Line 11?

MR. WRIGHT: Line 11.

MR. BALL (Reading):

14, 630 "Q. Do you keep records showing the instances in which drivers of Riss and Company have been charged with violating the laws of the several states?

"A. I think there is a certain record required by the Interstate Commerce Commission that I am certain is kept up."

* * * * *

"Q. Can you tell us what steps, if any, Riss and

Company takes to determine whether its drivers and the persons who load the trucks are complying with the laws of the several States as to weight limits?

"A. Yes. They have regular schedules they go by, know
14, 631 the States the trucks are going through and what the weight limits are, and so forth, and load the trucks accordingly.

"Q. Do you issue written instructions to the employees who load your trucks with respect to compliance with weight limits?

"A. I don't know. I imagine -- I am sure they do, but I don't know. I can't tell you."

* * * * *

"Q. Is that something that would be done by the Safety Department or is that done some place else?

"A. I am sure the instructions go out to the boys at all times.

"Q. What I am interested in now, Mr. Riss, is what department or persons in Riss and Company have charge of compliance with those particular regulations, i.e., the weight limitations.

"A. That would be done through the Operations Department. That is usually done by the terminal manager. The terminal manager is the man in charge of the local terminal.

"Q. Mr. Riss, perhaps at this point I should deviate
14, 632 from this line of questions a minute and ask you to give us the names of the separate several departments of Riss and Company. You have mentioned the Safety Department and auditing. Do you have such a department as that?

"A. I can't tell you all the departments we have. We have many departments.

"Q. Can you tell us any of the departments?"

* * * * *

14,633 "A. I can't tell you all the departments we have. We have many departments.

"Q. Can you tell us any of the departments?

"A. Maintenance Departments, Collection Departments, Ratemaking Departments, Auditing Departments. There are lots of departments.

"Q. Sales Departments?

"A. Sales Departments.

"Q. Do you have a Law Department?

"A. Yes.

"Q. Who is the head of that?

"A. Well, we have several people in our firm, lawyers, I can't tell you who all they are. I know several of them.

"Q. Does each one of these departments have a head?

"A. Yes, most of the departments have heads.

"Q. Any other departments in addition to the ones you named?

14,634 "A. No, I can't. Maintenance Department, of course. There are lots of little departments.

"Q. Operating Department?

"A. Yes. I can't tell you the names, who they are."

* * * * *

14,635 "(Reading) Q. Do you know what precautions your company takes, special precautions in the case of the transportation of explosives and ammunition?

"A. Not altogether. I know of some that we have taken.

"Q. Tell us the ones you know, Mr. Riss.

"A. We have had them followed by car to see that all safety precautions were taken for certain types of explosives.

"Q. What kind of safety precautions?

"A. We have a car there, with men in the car, to be there in case of an accident.

"Q. You are speaking about men in the tractor itself now?

"A. No, I am talking about men in a car, government cars in some cases.

"Q. These are not employees of Riss and Company?

"A. Not in some cases. In some cases they are. We have safety cars that follow. Where there are several trucks at one time, they often follow with them.

"Q. What are the men in the safety car supposed to do? What are their instructions?

14, 636 "A. The instructions are to do just that, see that the thing is operated in a safe manner, that the trucks are operated and loaded in a safe manner, everything necessary in safe operation of our business.

"Q. What other precautions that you know of are taken in the case of shipment of explosives?

"A. I can't tell you what precautions. I don't do it myself. I don't know.

"Q. Do you use any special equipment for the transportation of explosives that isn't used in the transportation of other commodities?

"A. Not that I know of. I don't recall any. The type of equipment necessary to handle that particular item, and whatever it takes, I don't know.

"Q. Do you use the same kind of tractor and trailer to carry explosives and ammunition that you use to carry other kinds of commodities?

"A. I think generally, yes. There might be some precautions in those trailers, linings and things of that kind that are different, but I don't know any particular difference.

"Q. What kind of lining are you speaking of, Mr. Riss? What do you mean, "lining"? I am not sure I understand.

"A. Well, trucks are lined, as you know. There are

14,637 walls inside, sometimes metal lining. They don't load explosives in metal liners in trailers.

"Q. They do not?

"A. No, wooden linings.

"Q. Any other special devices?

"A. None that I can recall.

"Q. Do you have any regulations in Riss and Company, apart from the ICC regulations, that relate specifically to the transportation of explosives? Does the company get out any regulations?

"A. I am sure they do, but what they are I can't tell you.

"Q. Are those regulations in writing?

"A. I am sure they are.

"Q. Is that again something that is done by the Safety Department?

"A. I imagine it is.

"Q. Do you keep any record of accidents involving your trucks that are carrying explosives as distinguished from your general records about accidents?

"A. I imagine they are segregated. I am not sure."

MR. BALL: Do you want me to go ahead? I was going over to page 244.

Now turn to the volume of the depositions, taken Decem-

14,638 ber 8, 1954. I want to start on page 244. Is that all right?

Start at page 245, line 12.

"(Reading) So I should like to ask you now if you will tell us what your duties were when you were president.

"A. I operated the company.

"Q. I see. You had supervisory power over all the activities?

"A. Yes.

"Q. Now, what change took place in those duties when you became chairman of the board?

"A. Well, as chairman of the board I had to do with the policies of the company and to coordinate the efforts of the officers of the company to carry out those policies.

"Q. How do you coordinate the activities of the officers?

"A. Just through meetings and suggestions.

"Q. Can you tell us specifically what difference there is between what you did when you were operating the company and what you do when you are coordinating the officers who are operating the company?

"A. Well, there is quite a difference, I think. In one
14,639 case you actually perform the work. In the other case you set the policies and see that it is performed, that the work is done.

"Q. What kind of work was it that you actually did as president that you no longer do? Did you give directions when you were president as to operating details that you no longer give?

"A. I did practically everything.

"Q. After you became chairman of the board did you give any directions to the operating officers of the company at all?

"A. Possibly suggestions in meetings.

"Q. While you were president, Mr. Riss, were you more familiar with the activities of the company than you have been since you became chairman of the board?

"A. With the actual operation of the company, I would say yes."

MR. BALL: Now, page 259, line 3.

"(Reading) Q. In the exercise of your supervisory authorities since you became chairman of the board, have you inquired into the extent of Riss and Company's activities in the American Trucking Association?

"A. No. I have a vague idea about what they are doing, that they are in some committees, but not in the over-all picture.

14,640 "Q. Have you ever heard of one of their committees or sub-organizations of the American Truckers Association called the Munitions Carriers Conference?

"A. Yes, I have heard of it.

"Q. Does Riss and Company participate in the Munitions Carriers Conference?

"A. I believe Mr. Quinn is a member of that, but I am not sure.

"Q. Was any one of the executives of the company whose duty it is to watch or supervise the activities of the company in this Association or any similar association ?

"A. No one. I think different ones were assigned to different committees. I don't know. I have a faint recollection of Mr. Quinn being on the Munitions Carriers Association. I don't know who are members of any of the others.

"Q. Mr. Riss, let me direct your attention to an answer you gave at the top of page 24 with respect to this same Association. You had said that you were a member to a limited extent, and I asked you what you meant by a limited extent, and you said 'I mean we don't go along with them in all their program. In some of the program, we do.' Could you now tell us what programs of

14,641 the Association Riss and Company does go along with?

"A. No, I cannot tell you just which ones.

"Q. Can you tell us which ones you don't go along with?

"A. No, I can't tell you that either any more, because I just haven't been keeping up with it at all."

MR. BALL: Now, turn to page 306, line 3.

MR. WRIGHT: I think the next question and answer ought to be read.

THE COURT: All right.

MR. BALL: "(Reading) 'Q. Was there a time when you did keep up with it and know which programs you went along with

and which you did not?

"A. No, I don't recall any time that I knew. I recall at one time when Mr. Powell was president, taking quite an active part in it -- I stopped it. But that is all I can recall."

MR. BALL: Now, page 306, line 3.

"(Reading) Q. Now, the same page, line 12, you mentioned cargo insurance. Can you tell us what amount of cargo insurance is carried by Riss and Company with respect to each truck load?

"A. I don't recall, but it strikes me that that is also -- it could be $500,000 each truck load and a million dollars each
14,642 terminal, I believe.

"Q. Did you personally at any time negotiate these insurance policies, Mr. Riss?

"A. I used to, years ago.

"Q. Did you do it throughout the time when you were president?

"A. Part of the time.

"Q. Was there part of the time when they were negotiated by someone else?

"A. Yes.

"Q. Who did that?

"A. Oh, I don't know who handled the details of it. Possibly somebody in the auditing department. Mr. Powell might have. I don't recall.

"Q. Mr. Powell?

"A. He might have.

"Q. Do you know who makes your insurance arrangements now in the company? Is there one person who does that?

"A. I believe Mr. Dannevik and R. B. Riss do."

MR. BALL: Now, page 335, line 3.

"(Reading) Q. Is there, say, a weekly operating report

of some kind that comes to your desk?

"A. No.

"Q. A monthly operating report?

14,643 "A. There are reports, yes. Various reports are made by the organization, but they don't necessarily come across my desk.

"Q. Is there a monthly officers report?

"A. Not as such, no. We have the operating committee, what we call the executive committee, and I don't know how often they meet. I am not a member of that.

"Q. So you don't meet with the executive committee at their regular meetings?

"A. Well, what we call the executive committee is actually the operating committee. I do at times, but not very often."

MR. BALL: Now, turn to page 339, line 22. No, did I say 39? I meant 59. Page 359.

"(Reading). Q. You mentioned the solicitation of government business at the locations by other men. What government business specifically does Mr. Romulo solicit?

"A. What government business?

"Q. Yes.

"A. Oh, I don't know. I imagine all government business that may have offices here or other places. He goes other places besides Washington I believe.

"Q. He travels out of Washington?

14,644 "A. Yes.

"Q. Does he solicit any other business than that related to explosives? A. I believe he does.

"Q. Do you have from these men who are engaged in the solicitation of government business periodic reports describing their activities?

"A. I'm sure that they go through the sales department, yes.

"Q. Do you see any of those reports yourself?

"A. I seldom look at them.

"Q. What's that?

"A. I seldom look at them.

"Q. Approximately how many traffic or freight solicitors have you in Riss and Company?

"A. I don't know any more. We have had as many as 200 but I don't know what there is now."

MR. BALL: Now, I want to turn to the last page, 406, line 4.

"(Reading) 'Q. What other State organizations than Missouri do you recall that Riss and Company belongs to?

"A. I don't recall any others.

"Q. Do you belong to any other trade association or group to which other common carriers by motor vehicle belong?

14, 645 "A. Other than in some States that we might belong to, but I wouldn't know which ones.

"Q. Who would know specifically?

"A. The officers of our firm.

"Q. Well, who would be the one who would know from the books of Riss and Company what contributions have been made, if any, or dues paid to any such organizations?

"A. Mr. Bell would know, I imagine; Mr. O'Brien. Dannevik would probably know.

"Q. You do not know offhand the names of the ratemaking bodies to which you belong, that is, Riss and Company?

"A. No."

* * * * *

14, 646 "(Reading) 'Q. Well, let me ask have you been concerned as a part of that with the question of whether you're making or losing money?

"A. I'm always concerned about making or losing money.

"Q. That is one of your primary concerns. And have you been concerned with the question of whether your business is increasing or is not increasing?

"A. I am always interested to hear it is increasing.

"Q. But is that a primary concern of yours?

"A. Sure, of course it is.

"Q. You have responsibilities about that, do you, in the company?

"A. Well, my responsibilities as chairman of the board are about everything in the company, of course.

"Q. But I am now trying to find out about the matters which are your primary concern. Is that one of your primary

14, 647 concerns?

"A. Well, I am concerned, of course, about all angles of the company, of course. I am very concerned about any angle of the company.

"Q. Well, what I am trying to get at, Mr. Riss, is what are the areas that you really know more about than these other witnesses that we will be dealing with or the areas in which you are particularly informed and in which you particularly work. You have mentioned cost, you have mentioned whether you are making or losing money, and you have mentioned in the matter of whether your business is increasing or decreasing. But are there other matters that are of primary concern to you?

"A. Well, I just don't know what you are asking. As I stated to you, I am interested in all matters pertaining to our company.

"Q. Well, what I am really trying to get at is what are the subjects that you know as much about or more about than anyone else in the company in management?

"A. I doubt if there is any subject I know as much or more about than our top officials."

I want to turn to page 416, line 16. I will make it line 13, Mr. Wright.

14, 648 "(Reading) 'Q. Well, now, do you have a regular routine yourself for keeping track of costs?

"A. No, I do not.

"Q. And why your costs are going up or why they are going down?

"A. No, I do not.

"Q. Do you have any regular routine for checking on why your business is going up or why it is going down?

"A. No regular routine, no. We have meetings, of course, where the boys are called in, all the field men, all the terminal men, several times a year, hear discussions and so forth.

"Q. Well, several times a year doesn't fill up this eight hours seven days a week. Do you have daily conferences with the president?

"A. Not daily, no.

"Q. Do you have daily conferences with the executive vice-president?

"A. No.

"Q. Do you have any daily reports as to the way business is going, how the costs are going?

"A. Do I?

"Q. Yes.

"A. No."

14, 649 MR. BALL: I was going to move then to page -- I have the next volume, page 490. This is a continuation taken on December 13, 1954. Page 490, line 9.

"(Reading) 'Q. Mr. Riss, do you get periodic traffic reports?

"A. What do you mean by 'traffic reports'?

"Q. I mean do you get daily, weekly or monthly reports of volume of traffic either in general totals or in detail?

"A. Well, there are some prepared. I don't get them regularly.

"Q. You do not make it a practice of looking at the traffic reports?

"A. No, not regularly.

"Q. Do these traffic reports give details as to types of shipments?

"A. I don't believe they do any more. We used to make them out that way, but I don't think so any more.

"Q. Do they break down between the government business and non-government business?

"A. I believe they do.

"Q. So far as the one shipper, the government, is concerned, you would have a separate reporting indicating that volume?

14,650 "A. I believe they keep those items separate.

"Q. You mentioned in one of the previous examinations your interest in the cost factors. Do you get specific cost reports periodically on your desk?

"A. Oh, I think there are some made out. I don't generally look at them regularly. I do when my attention is called to the expense some place that I think is out of line, I get into it, but it's not a regular procedure."

MR. BALL: Now, I want to turn to page 509, line 11.

"(Reading) Q. Well, what freight solicitors does Riss and Company have that solicit government business?"

Why don't I go back to line, Mr. Wright, to line 8?

"(Reading) Q. Now, does Riss and Company have any solicitors stationed at these government agencies?

"A. Not to my knowledge.

"Q. Well, what freight solicitors does Riss and Company have that solicit government business?

"A. Oh, I think any one of several.

"Q. Well, now, Mr. Romulo you have mentioned on that.

"A. Yes. There would be Mr. Pick. Maybe the sales manager himself would make certain calls.

"Q. That is Mr. McGuire?

"A. Yes. I believe Mr. Rodebeck makes certain calls.

14, 651

"Q. Does Mr. Quinn make any?

"A. I believe he does at times, but seldom, I would say.

"Q. Do any others, other than those gentlemen?

"A. I don't know who all does make calls. Anyone may be assigned to call on an installation, I am sure.

"Q. You have mentioned some drop in the amount of government business. Do you break that down between Navy, Army and Air Force shipments?

"A. I don't know if they do or not.

"Q. You don't know whether there has been any difference in the shrinkage of volume depending on whether it comes from the Air Force, the Navy, or the Army?

"A. No, I do not. I wouldn't know."

MR. BALL: I move to page 511, line 20.

MR. FLYNN: I didn't hear the page, Mr. Ball.

MR. BALL: Page 511, line 20.

"(Reading) Q. Does Riss and Company belong to the Colorado Truckers Association?

"A. I don't know if they do or not.

"Q. Does Riss and Company belong to the Pennsylvania Truckers Association?

"A. I can't tell you. I don't know what state associations

14, 652

they do belong to.

"Q. Who in your organization would know what the memberships of Riss and Company in various organizations were and what dues if any were paid to such organizations?

"A. I believe Mr. Dannevik would know that.

"Q. You yourself do not personally act in those matters, is that correct?

"A. No, I do not."

MR. BALL: I want to move to page 549, line 7.

"(Reading) Q, Do you employ anybody, attorney or otherwise, to watch what goes on in state legislatures and report to you,

the currency of bills and measures that might affect Riss and Company?

"A. Not to my knowledge.

"Q. Who would know of any such representatives employed?

"A. Well, I think the president or the executive vice-president would know.

"Q. Have you discussed at any time to your knowledge within the past five years the pendency of any legislative matters with any representative of the American Trucking Association?

"A. No, I have not.

"Q. Or with any member of any state truckers associa-

14,653 tions?

"A. I have not."

MR. BALL: Now, page 550, line 1.

"Q. Mr. Riss, what reports are made of accidents involving Riss and Company operations or equipment?

"A. I think there is an accident report that is required by the Interstate Commerce Commission, whatever other reports we make, I can't tell you. I know reports are made.

"Q. Well, do you make reports for the purpose of insurance companies?

"A. I am sure we do.

"Q. Do you know to whom these reports are made?

"A. Directly, you mean?

"Q. Yes.

"A. I don't know. Somebody in the Safety Department, I imagine.

"Q. Do you know what is done about the reports that are made?

"A. No, I do not know what action they take. I am sure they are filed with the Interstate Commerce Commission, for one. I don't know.

"Q. Are they filed with State or Federal agencies?

"A. If required, I am sure they are."

14,654 MR. BALL: I will move to page 554, line 15.

"(Reading) Q. Have you any recollection of any instances in which Riss and Company or its drivers have been accused or convicted of violating the speed laws in the last five years?

"A. No, I don't have any first-hand knowledge of any particular case.

"Q. Is that subject ever discussed with you by the officers of Riss and Company?

"A. No.

"Q. Do you recall of any instances in the last five years where Riss and Company trucks have been accused of violating the length of equipment laws of the various states?

"A. I don't recall. I never hear of those details. I don't recall any.

"Q. Do you recall of any instances in the last five years where Riss and Company has been charged with operating overloaded trucks?

"A. I don't recall any instances.

"Q. Then your recollection in the last five years the subject never has been brought up for discussion with you?

"A. I don't recall any of them.

"Q. Do you recall any instance in the last five years where

14,655 Riss and Company has been accused of violating the regulations on explosives regarding the length of driving time which drivers can continue driving trucks?

"A. On explosive cases?

"Q. Yes.

"A. I don't recall any.

"Q. And you recall no discussion of such a subject in the last five years?

"A. No.

"Q. In the last five years do you recall of any instances where Riss and Company has been accused of failing to stop before a railroad crossing?

"A. I don't recall any specific instances where they were accused.

"Q. Do recall ever having a conversation about such subject?

"A. No, I do not.

"Q. Do you recall ever having any incident in the last five years in which Riss and Company has been accused of violating the length of hours of service of the driver in a given day?

"A. I don't recall any instance unless the Ohio case has something to do with it. I don't even know what their charges are.

14,656 "Q. Do you recall of any instance in the last five years where you have learned or have been told about or have discussed the charges that Riss and Company has operated equipment without the proper signs and identifications?

"A. I believe some of these complaints are in the Ohio complaint, but that's the only one I recall.

"Q. By the Ohio complaint, you mean the one that the State of Ohio has initiated with the Interstate Commerce Commission?

"A. Yes.

"Q. Do you recall ever having had any discussion or learning about any charges made against Riss and Company of operating trucks without the required safety equipment?

"A. I don't recall any.

"Q. That would include claims of defective brakes or other defective equipment; is that true?

"A. I don't recall any cases. I don't get into those things."

MR. BALL: Now, page 565, line 15.

"(Reading) 'Q. Has Riss and Company, to your knowledge,

ever opposed the application of any motor carrier for a certificate of authority before the Interstate Commerce Commission?

14, 657 "A. I don't know. I don't know if they have or not.

"Q. Have you ever appeared to support the application of any other motor carrier for a petition for authority to do business?

"A. I never have.

"Q. Have you ever had any knowledge of any officer, agent, or employee of Riss and Company ever having done so?

"A. Supporting a motor carrier?

"Q. Yes.

"A. Not to my knowledge.

"Q. Or opposing a motor carrier.

"A. I don't know of any cases. They might -- they might oppose someone applying for operating authority. I don't know.

"Q. Who in your organization would know?

"A. I imagine the officers.

"Q. Again, you mean Mr. R. B. Riss and Mr. Dannevik?

"A. That is right."

MR. BALL: Now, I want to move to page 569, line 17.

"(Reading) Q. You are aware, are you not, of proceeding initiated by the State of Illinois against Riss and Company in 1952 in the Circuit Court of Salem County, Illinois.

14, 658 "A. I am not.

"Q. Do you recall some litigation started which has recently been appealed by the Hayes Motor Freight Company to the United States Supreme Court?

"A. I just heard it the other day when the decision came out. I didn't know such a case was pending .

"Q. Your testimony is, then, that you did not know that similar proceedings had been initiated against Riss and Company?

"A. No.

"Q. You did not know, I take it, that Riss and Company

had sought an injunction to prevent prosecution, is that correct?

"A. I don't recall the case."

MR. BALL: Turn to page 571, line 5.

"(Reading) Q. Are you informed about proposed changes in Riss and Company rates?

"A. No.

"Q. Mr. Stone, when he was there, handles those matters without consultation with you, is that correct?

"A. With me, yes.

"Q. Did you ever at any time propose an increase or decrease in any rates of Riss and Company?

14,659 "A. I have always cried about working too cheap and let it go from there."

MR. BALL: Now, page 579, line 17.

"(Reading) Q. Now, have you ever heard of a criminal information or an indictment filed in the United States District Court for the District of Massachusetts against Riss and Company?

"A. I have heard of it, yes.

"Q. What does it involve?"

MR. WRIGHT: Excuse me, what page is this?

MR. BALL: Oh, pardon me. Page 579, line 17.

"(Reading) Q. What does it involve?

"A. I don't know exactly what it involves. I think that case is still pending.

"Q. Yes, it's still pending.

"A. Yes.

"Q. Does it involve the operations of some other trucking company than Riss and Company?

"A. I believe they allege that we had control of some company.

"Q. Do you know the name of the other company?

"A. No, I do not.

"Q. Do they allege that that control was effected through

an officer of Riss and Company?

"A. I don't recall what the charges are in that. That's

14,660 through someone in Riss and Company -- I don't know -- officer --

"Q. Do you recall the names of the officers of Riss and Company that are named or involved in that matter?

"A. No, I do not."

* * * * *

"(Reading) Q. Who in your organization is informed about this matter?

"A. I imagine our counsel and I'm sure that the officers --

"Q. By your counsel do you mean Mr. Layne?

"A. Or I imagine --

"Q. Or local house counsel?

"A. I don't know if Mr. Layne is handling that case or not.

"Q. You meant then house counsel?

"A. Yes.

"Q. That would be whom?

"A. Oh, Mr. Dannevik, of course, is counsel, a lawyer. I can't think of the name of one of our lawyers.

"Q. Now, this information was initiated by what agency.

14,661 Do you recall?

"A. No, I do not.

"Q. Now, that's not one of the matters that are covered in your complaint, is it? The filing of this information?

"A. I don't think so. I don't know."

* * * * *

"(Reading) Q. Well, now, do you recall that you did have a practice of interchanging explosives traffic at St. Louis?

"A. I don't know if -- Probably, but I don't know. I just don't know where all they did exchange.

"Q. Would there be any reason to your knowledge why the amount of traffic -- or explosives traffic -- interchanged by

Riss to others dropped from 257 truckloads in July of 1953 to 24 truckloads in November of 1953?

"A. Do I recall why?

"Q. Yes.

"A. No, I don't. I didn't know anything about it.

"Q. You didn't know that there had been such a drop-off in that business occurring steadily month by month in the second

14,662 half of 1953?

"A. I wish I had of known it. I did not know it, no.

"Q. You did not know the reason why that occurred?

"A. No."

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DIRECT EXAMINATION OF MARTHA HASKELL BY MR. HAYS

* * * * *

14,702 Q. Did you have occasion to utilize the services of Riss and Company? A. Yes, I did.

Q. And about when did that occur?

A. I ordered the trucks, I called Riss -- may I please tell it in my own words?

Q. Go ahead.

A. In making the change-over from rail, when I went into Zion

14,703 Industries in July of '56, I was there just about three weeks prior to their heavy shipping period on their candy. Most of their candy was seasonal, we had Halloween items and then in turn we followed through with Christmas candy.

Well, in making the change from rail to truck, I had to call on my memory as to what I had been exposed to at Great Lakes, primarily the facility file. I was familiar with Riss's authority. As far as the points that we were shipping to from Zion, Riss had, well, it was almost tailor made for our needs. So I contacted their Chicago terminal, I had checked it out in the tariffs, they had rights into Zion, they could come in there and pick up our freight and deliver it supposedly on a direct basis, which was quite an advantage because generally truck freight out of Zion has

to go into Chicago and be transferred and then ultimately on to destination.

So, on the 15th of October -- August, I called Riss in Chicago and asked that they send out three trucks. I had 120,000 pounds of candy that was going to be moving around the 10th of September and I called to check to make sure that they would protect the movement and everything, and I set it up at that time. Then later, the 2d, well, around the 7th of September, I called and confirmed my original order and made arrangements that the three trucks were to arrive at the same time at our dock for us to load out the freight.

Q. What kind of candy did you ship, Mrs. Haskell?

14,704 A. That was a Halloween item, it was candy corn.

Q. Now, just to refresh our recollection, tell us a little bit about this candy corn. Was it popcorn or was it --

A. No, no, it is candy, it is a cream type of candy, which you call candy in the industry; however, it is strictly candy, there is no popcorn involved.

Q. Tell us, if you will, briefly, how that candy is made, what are its characteristics?

A. Well, it is basically sugar and it is quite a process, there are three different colors that must be blended together and after the little kernals are formed, then they have to be processed in starch dyes for a period of days and after that -- I, of course, I am no candy expert, I am not here in that guise.

Q. I understand.

A. But I have watched them make it and there are about four different steps that must be taken before the corn is complete.

Q. And when it is finally finished, how is it packaged, Mrs. Haskell?

A. In various types of packages; we had cellophane packages, one pound and two pounds; and some of them were in cartons, small cartons that had a cellophane window.

Q. Tell us the method of packing that was employed with the candy that was shipped in the shipment that you sent by Riss?

A. Well, the candy that was shipped in this particular shipment
14,705 was all in cellophane packages. However, I am not positive as to whether it was one pound or two pound packages, but they were all in cellophane packages.

Q. Not to exceed two pounds, I take it?

A. That is correct.

Q. Then how many of those cellophane bags were packed in cartons?

A. Generally, twenty-four.

Q. The total weight of the carton was then about what?

A. It varied, the normal density, the cubic density of the candy corn averaged thirty-five pounds a cubic foot.

Q. Thirty-five pounds a cubic foot.

A. Correct.

Q. And you say the total shipment was how many pounds?

A. I had 120,000 pounds of candy.

Q. Consigned to what company?

A. Loblaw, Incorporated.

Q. Where is Loblaw located?

A. Their home office is in Buffalo, New York.

Q. What were the shipments and the points to which the corn, this candy, was to be shipped?

A. I had one truckload going to Buffalo, one to Syracuse, one to Youngstown, Ohio, and -- there were four truckloads involved because there were two truckloads that went to Buffalo.

Q. Did you ship all four of those truckloads by Riss?

14,706 A. No, sir. Riss did not have authority into Youngstown, Ohio, and they did not receive that shipment. They were not supposed to receive that shipment, they were to handle the two Buffalo and one Syracuse.

Q. How was that shipment finally handled -- who was supposed to handle the other shipment?

A. Motor Cargo.

Q. That is a different trucking company?

A. That is correct.

Q. And what finally happened as it moved?

A. As the freight moved, it so happened Motor Cargo picked up the Buffalo shipment instead of the Youngstown and Riss had the Youngstown shipment with the Buffalo and Syracuse; and when it was discovered that they were in possession of the Youngstown freight, they turned it over to another carrier in Cleveland and forwarded it on to Youngstown.

Q. And you say the approximate date these shipments were dispatched was what?

A. The 13th and 14th of September.

Q. And then when did you next hear of them?

A. Well, on the 28th of September, I had a call from Buffalo and the customer wanted to know where his candy was. Well, it was a very good question; I wanted to know, too. And I called Chicago and checked with their dispatcher and he said he would call me back and when he did call me back, he said that their candy was sitting on their lot in Cleveland and had been there for fourteen days. Well, naturally, my concern was in

14,707 satisfying our customer because without those customers we were out of business. And I gave orders to forward that freight immediately, which they did; I have never had such good service as I had then. But there was no problem, I mean the customer was satisfied that they did receive the freight; we were able to take care of even the Youngstown shipment, it was forwarded on, everything was fine.

Q. Tell me, were the trailers in which this candy was shipped, insulated trailers?

A. No, sir.

Q. Were you advised as to where the trailers were parked in Cleveland these fourteen days?

A. Yes, sir. They were parked on the lot in Cleveland, that means out on the open lot at the terminal in Cleveland.

Q. Have you any recollection as to weather conditions during that time?

A. We had the Weather Bureau check, give us a report on the

weather conditions during that period and we found that temperatures ranged from 79 to 89 degrees in the daytime and as low as 40 degrees at night; there was quite a variation.

Q. In the temperature? A. Correct.

Q. Did you hear anything further from those shipments?

A. Yes, sir. Around the 20th of October, I had a call from Buf-
14,708 falo and it was our sales manager. He had had an urgent call from the customer; when they had distributed these cartons of candy corn throughout their system, that they found part of them were damaged and part of them were whole. When I refer to damage, I mean it was hidden damage. The cartons that had been exposed to the outer portion of the trailer, the ones that were on the outer fringe of the packing, the load, had been subject to these extreme changes of temperature and they accumulated moisture and became sticky and were unsalable as first class merchandise.

Q. What is the normal delivery time from Zion City to Buffalo?

A. To Buffalo, we could have second morning delivery.

Q. And after you found out that this candy -- you had this report, what did you then do about the merchandise?

A. I called Riss and notified their representative that we were involved in concealed damage, that I didn't know what the extent was, but I would appreciate his having their investigator get onto the matter, that the candy had already been distributed to Loblaw's various outlets and it was important that some action be taken immediately because they had to have this candy on their shelves, it was Halloween, they had to have the item, they had no way of getting a replacement for that order.

Q. What happened then?

A. I later filed a formal claim with the company, on the 2d of
14,709 December. And at that time -- I was never informed as to whether or not an investigation had been made. However, with that amount of freight involved and the money that was involved in the invoice, one would normally assume that an investigation would have been made, that steps would have been taken to find out just the extent of the damage.

Q. You had no advice as to whether there was or was not an investigation?

A. The only advice I had was at the time I talked to the representative, he said he would take care of it and for me to proceed with a formal claim as soon as I had all the supporting data.

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READING OF DEPOSITION OF JAMES A. BRAWLEY BY MR. BALL

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14, 735 "Q. Have you had occasion over the years to use the service of Riss and Company? A. Yes, sir.

"Q. Was that in connection with movement of LTL traffic during the years of '51 and '52? A. Yes, sir.

"Q. Have you made some investigation of your records to determine the extent to which you used that company's service on LTL traffic during the years '51 and '52? A. Yes, I did.

"Q. Can you tell us volumewise how much traffic they handled for you outbound in the year '51?

14, 736 "A. In '51 our card shows we shipped three hundred thirty-one thousand two hundred eighty-five pounds for the year.

"Q. Was that all in LTL service? A. Yes, sir.

"Q. And did the traffic move to various points in the Midwest and in the Eastern part of the United States?

"A. Yes, sir.

"Q. Can you name some of the points, please, Mr. Brawley?

"A. Allenport, Pennsylvania; Boston, Massachusetts; Cincinnati, Ohio; Cleveland, Denver Colorado; Helena, Montana; Irvington, New Jersey; Kansas City, Newark, New Jersey; Pittsburgh, Pennsylvania; Philadelphia, Pennsylvania; Portland, Oregon; Seattle, Washington, Salt Lake City, Shelocta, Pennsylvania; Hartford, Connecticut; St. Louis, Missouri. Those are the ones I picked out.

"Q. Will you give us the same information for 1952 respecting the volume of LTL traffic handled by Riss and Company for your company?

"A. 1952 was five hundred thirty-eight thousand eight hundred one pounds.

"Q. And that again, as I understand, was all LTL traffic?

14,737 "A. All LTL, yes, sir.

"Q. Did it move, so far as you know, to points similar to those which you have previously named?

"A. Yes, sir, similar.

"Q. Now, subsequent to 1952, did your company continue to use Riss and Company's services for the movement of its LTL traffic?

"A. Yes.

"Q. Did it use -- did the use decrease or increase?

"A. Well, we decreased right along.

"Q. Do you have the figures for the LTL tonnage moved by Riss and Company for the year 1955?

"A. Somewhere I do.

"Q. Would you refresh your recollection and state it for the record, please?

"A. 1955 was twenty-three thousand six hundred fifty-four pounds.

"Q. What is your explanation for the decrease in the use of Riss and Company's services in 1955 over the previous years?

"A. Well, the best I can recall, it was just insufficient service. I could get better service otherwise."

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DIRECT EXAMINATION OF MR. REAVES BY MR. McGLOTHLIN

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14,853 Q. I think you also, I am sure you mentioned it, when you came with the company, Riss was providing service out of the plants in the Pittsburgh area; is that correct?

A. That is my information, yes.

Q. You have two or three plants in that area?

A. We have seven plants in the Pittsburgh area.

Q. What was the nature of the shipments that were being made from those plants by truck?

A. They would be shipping automobile glass to assembly plants at Texas, Kansas City, and such; and various paint articles in the Southwest.

Q. Did I understand you that you no longer, that the company no longer shipped from Pittsburgh west by Riss and Company. Is that correct?

A. That is correct. They have removed their facilities there, similar to the in and out operation at Clarksburg.

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DIRECT EXAMINATION OF PAUL WENDT BY MR. McGLOTHLIN

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14,898 Q. When you took over your present duties -- in 1949, I believe, -- was the company using Riss as a carrier at that time?

A. Yes, we were.

Q. Did it continue to do so for a while?

A. Yes, sir.

Q. Does it use -- let me ask you first -- are these shipments on which Riss is being used from plants to distributors, or from plants to assembly plants for automobiles, or both?

A. Basically to distributors.

Q. And from what plants was most of the movement that Riss carried?

A. We used them quite extensively from Toledo into the east and into the southwest. And we also used them from our Charleston, West Virginia plant into the east.

Q. I believe you told me Charleston makes window glass. Is that correct?

14,899 A. Yes.

Q. And Toledo makes, one plant one type of product, and another plant another?

A. A superior product, yes.

Q. Can you give me any idea of the volume of shipments that were being made via Riss, say along in 1954 or '55, from Toledo? -- any approximation?

A. The records we have indicate that in 1954 Riss handled 124 truckloads for us; and in 1955 it was 91, I believe.

Q. That is from Toledo?

A. Yes, all from Toledo.

Q. Does LOF now ship via Riss?

A. No, sir.

Q. Take Toledo first, if you will, Mr. Wendt, and tell me in your own way why it was that in 1954 you were shipping as you told us you were, and you since have stopped shipping via Riss.

A. Well, I wasn't able to find any tonnage records prior to 1954. But we did use them more extensively, because at that time they maintained an adequate supply of open-top trailers in Toledo for us. And it was in 1954 and 1955 that gradually it became more and more difficult for the traffic department to get this type of equipment from Riss. So their business with us dropped.

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DIRECT EXAMINATION OF MR. LIND BY MR. McGLOTHLIN

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14,922 Q. Mr. Lind, you said that you followed the policy of the Bureau of Ordnance as to what could and could not be shipped:

Did the Surface Traffic Division also have a policy as to the division of traffic between rail and truck and between individual carriers?

A. Yes, sir.

Q. Can you tell us in your own words what that policy was?

A. Assuming that the rates and the particular modes of transportation could provide comparable service within the time requirements, the method of transportation of the carriers offering the lowest transportation would be given the traffic.

Wherever the rates were equal between the competitive modes of transportation, the traffic would be divided 50-50, and then within each mode
14, 923 the traffic was further subdivided between those carriers that could participate in the traffic, and of course with the same rates.

However, this; the ammunition and explosives that were covered by the Bureau of Ordnance regulation to be excluded from motor carrier operation, were not considered in this category. They moved by rail.

MR. McGLOTHLIN: Mark this one, please.

THE CLERK: No. 66 defendant, the Pennsylvania Railroad Exhibit No. 31 for identification.

(Thereupon, a large chart was marked No. 66 defendant (PRR) Exhibit No. 31 for identification.)

BY MR. McGLOTHLIN:

Q. Mr. Lind, I am going to ask you to help me a bit in working out the equality policy you mentioned, in multiple carriers, and to give it a little life I am going to take -- we will call this "Earle, New Jersey," for that, and we will call this "Umatilla, Oregon," destination.

Then I will put "Chicago" in here as the interchange point for both rail and truck.

Now, take the situation, Mr. Lind, where you have a large shipment, so that it is large enough to divide into truckloads of carloads several times, and it is going to move from Earle, New Jersey, to Umatilla,
14, 924 Oregon.

Now, take first the situation where there is one railroad:

Assume there is one railroad that can go all the way and that there is just one truck line that can go all the way, and they have equal service. They can both meet your service requirements and they have equal rights.

How will it be divided then?

A. That would be divided 50 per cent, or half, to each. Umatilla, Oregon, is an Army utility.

Q. What is a good equivalent to that in the Navy?

A. Hawthorne, Nevada.

(Thereupon the name on board was changed to "Hawthorne, Nevada.")

Q. Now, let's take the situation that is on PRR 31 for identification. We have one railroad and two truck lines that can serve from Earle as far as Chicago. How would the traffic be divided among those three?

A. Well, are you talking of the through movement, now?

Q. Yes, I am talking about the through movement.

A. All right. The through movement would be divided 50 per cent by the motor carrier and 50 per cent by the rail.

Q. So you would have 50 per cent by rail, which is No. 1, and you
14,925 would have a quarter each by A and B as far as Chicago; is that right? A. Yes.

Q. Now, beyond Chicago you have two railroads, two other railroads which can serve from Chicago to Hawthorne. Would they divide equally the rail portion of the movement?

A. Yes, Carriers 1 and 2 together would get 25 per cent, and Carriers 1 and 3 together would get 25 per cent.

Q. So that you would have 1 plus 2 gets 25 per cent of the total; and 1 and 3 get the same.

Now, the truck lines are taking half, A and B are taking half out to Chicago, and you say they would each be carrying a quarter of the movement that far. Is that correct?

A. That's right.

Q. And how would the movement be divided beyond Chicago to Hawthorne by truck, assuming you have three other carriers which interline beyond Chicago?

A. Well, A and C would get one-sixth of the truck portion and A and D would get one-sixth, and A and E.

Then B and C, B and D, and B and E would also get one-sixth of the truck portion.

Actually, the way it would probably work from a practical
14,926 standpoint is that it would not be divided into that many different routes.

Q. Was this policy followed throughout your experience --

A. Yes, sir.

Q. -- in the Navy. You mentioned that shipments of less than 1,000,000 pounds, non-explosives materials, were shipped where routing was controlled by zone office. I believe you said?

A. Yes, sir.

Q. Did Washington headquarters exert any supervision over the zone offices?

A. Yes, sir. The Office of Assistant Chief of Transportation made the policy and also reviewed the reports as to their actual routings.

Q. Well, are you able to tell us from your observation of the supervision of the zone offices whether or not they also followed this policy?

A. That's right.

Q. They followed the same equal distribution policy?

A. That's right.

Q. As I understood you, Mr. Lind, you said that meeting the service requirements of the Navy was one major factor, and that low cost was the other factor. Is that correct?

14,927 A. That's right.

Q. Were there other factors that influenced you to favor or discriminate against any particular mode of transportation?

A. No. That was the two basic items as traffic managers that we were concerned with.

Q. Well, I represent the Pennsylvania Railroad. Did you favor or discriminate against the Pennsylvania Railroad for any other reason?

A. No, sir.

Q. I should say "for any reason?"

A. No, sir.

Q. Riss and Company is the plaintiff in this case: Did you discriminate or favor Riss for any reason?

A. No, sir.

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CROSS EXAMINATION OF MR. LIND BY MR. WRIGHT

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14,932 Q. I think in response to Mr. McGlothlin's questioning about the chart there, you pointed out that it would be impracticable to make the kind of division he put on the chart there when you had that many carriers to deal with; is that right?

A. Yes. Usually you did not have that many explosives carriers serving the points involved, for the first reason..

Q. I take it this division was kind of an over-all ideal that would be worked out over periods of time rather than with respect to any or every

14,933 particular shipment; isn't that true?

A. Yes. We did not divide where an increment would be less than a load lot.

Q. What you tried to do was balance out over what, three months, six months?

A. Usually a month.

Q. A month?

A. One month, usually.

Q. And, of course that, again, was limited to the larger shipments; of course, where you had the small shipments there wouldn't be any opportunity to do that, I take it?

A. That's right.

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DIRECT EXAMINATION

OF MR. COE

BY MR. McGLOTHLIN:

* * *

14,965 Q. Mr. Coe, there were instances, were there not, where a movement of ammunition and explosives on behalf of the Marine Corps could be moved physically by either railroad or truck? Could that occur?

A. That occurred, yes.

Q. And there were instances, were there not, when two or more railroads or two or more motor carriers could move the same shipment, physically move it? A. That is true.

Q. Now, would you tell me, in your own words, what policy did the Marine Corps follow from '50 to '57, when that situation existed, in deciding, first, whether it would use rail or truck, or how much of each, and secondly, which particular railroad or trucker it would use?

A. We would determine from a cost standpoint if the carriers were equal in the over-all cost of transportation plus the handling charges at both ends; and if such were the case, and we had no special service requirement, we would divide that traffic as near as possible on a fifty-fifty basis between the two modes of transportation.

14,966 Q. And how about within the modes? Suppose you had that situation, and you divided it fifty-fifty, and now you find there are two railroads which have the same rate, both can meet your service requirement, how would the rail section be divided between them?

A. That would also be divided as near as possible on a fifty-fifty basis.

Q. I will change the numbers a bit. Suppose you had three motor carriers which could also provide the service at the same cost. How would the motor carrier section be divided?

A. If there was sufficient volume, we would divide it thirty-three and a third for each carrier, the portion that was allotted to the motor carrier mode.

* * *

14,967 Q. You mentioned service and cost as the basis upon which you made your decision as to routing; is that correct? A. That is correct.

Q. Were there any other factors that swayed your judgment?

A. Deadline delivery dates to meet a ship sailing, or for other reasons. That date was set up by the supply people and we followed their wishes, and used the mode or modes of transportation that would meet their deadlines.

Q. We will include that in service, and then we will add the factor of rates. Are there any other factors that swayed your routing?

A. The delivery facilities at destinations could possibly make the traffic all move by rail or all move by motor, depending on the location of our storage facilities.

* * *

DEPOSITION OF MR. PETERMAN
READ BY MR. McGLOTHLIN

* * *

14,977 "Q. Would you describe for me, please, the method your office would follow in routing a shipment? I will ask as a preliminary question whether you followed the same methods for routing shipments for which you were responsible throughout the period '49 through '57.

"A. Yes.

"Q. Would you describe what that method was? How would the original request be received and what would you do about it?

"A. The request would be received either by mail on a standard form, by telegram or by phone. The request would then be checked for rates and for available carriers, either rail or motor, and a determination made on the basis of the rates. The lower mode, or the lower rate would indicate the mode of transportation. In cases where the rates were the same and all things were equal, the traffic would be divided between rail and motor.

14,978 "Q. Would you explain what you mean by all things being equal?

"A. Well, if there was no disability existing at the shipping point or the delivery destination.

"Q. What do you mean by "disability"?

"A. Well, in some cases, some of the installations were not in a position to accept motor, for instance, which would require rail movement.

"Q. What would be an example of an installation such as you described, or was your office simply advised that certain named installations were not in a position to accept motor shipments?

"A. That was the case. Often times the request, when it comes in, would indicate a mode. Well, we may go back at them and find out the reason why, and if the reason was satisfactory why we would go along with it.

"Q. I believe you said, in effect, all things being equal, you would divide traffic equally between rail and motor. Could you spell that out in a little more detail?

"A. You mean what the division is?

"Q. Yes.

"A. Well, in cases of a larger shipment. why it would be divided equally between the rail and the motor. In the case of maybe one or two carloads, why it would be either motor or rail.

14,979 "Q. Do you mean by that equal division between the railroads serving the facility in question, on the one hand, and the motor carriers serving the facility on the other, all things being equal?

"A. I don't quite understand your question.

"Q. Just to take a very simple example, a movement that could be performed by either of two railroads or by a truck line. How would the division you described take place?

"A. If there was one truck line and two rails, it might be divided one-third.

"Q. You mean one-third to each railroad and one-third to the truck?

"A. To the motor carrier.

"Q. You say it might be. Would that be an invariable policy?

"A. Well, it would depend somewhat upon the tonnage that had been handled by either the motor carrier or the rail carrier.

"Q. We have been talking up to now about originating carriers. Was such a division attempted between delivering carriers as well at a particular installation or on a particular movement from one installation to another?

"A. If two railroads served the originating installation and two railroads served the delivering installation, we would try to make the division on both carriers, providing the rates applied in connection with both delivering carriers."

14,980 MR. McGLOTHLIN: Then the government attorney, Your Honor, asked the following question:

"MR. MAYO: May I ask one question? Would it be fair to say, Mr. Peterman, that, as between modes, it was generally on a 50-50 basis but specific circumstances might vary that?

"THE WITNESS: Well, that is. Yes, that would be the general policy. When all things are equal, why there is no reason for a division btherwise."

MR. McGLOTHLIN: And Mr. Holt resumed the questioning:

"Q. Going back to the simple example I used of one motor carrier being able to perform the service and two different railroads being able to perform it, and assuming that it is always that other things are equal, Mr. Mayo described the division as 50-50 between modes, which would imply to me that you would attempt to give one-half of the traffic to the single motor carrier in my example and the other half to the two rail carriers, rather than one-third equally to the three as I understood you to say a moment ago.

"A. In some cases it was 50-50 and in other cases it was one-third.

"Q. Was there any rule that decided which would be a 50-50 situation and which would be an equal --

"A. As I said before, the tonnage that was handled previously by the carrier would have some bearing upon the division.

14,981 "Q. In what way? Do you mean an attempt over the long run to equalize the tonnage handled by the carriers involved? "A. That is correct.

"Q. Would your effort in my simple example be to equalize the tonnage among the three carriers or to equalize the tonnage between the two modes?

"A. Between the two modes.

"Q. In the long run? "A. Yes."

MR. McGLOTHLIN: Then Mr. Bridgeman asked:

"I think possibly, Mr. Holt, we should have some definition of what the "long run" is.

"THE WITNESS: Well, over a year's period."

MR. McGLOTHLIN: Mr. Holt resumed:

"Q. You would audit these figures annually or monthly or quarterly or on some periodic basis? "A. Yes.

"Q. Do I understand you to say that a year would be the basic period you would use? "A. Yes.

* * *

14,991 "Q. I would like to turn your attention to the hypothetical question that Mr. Holt put to you with respect to the situation where there would be one motor carrier and two rail carriers operating between a particular pair of points. Let me ask you this, Mr. Peterman: Suppose the situation were reversed and there was one rail carrier and two motor carriers? What would be the division of traffic if cost considerations were equal?

"A. The same situation would apply.

"Q. Did you normally route ammunition and explosives where through routes were involved by both originating and terminating rail carriers?

"A. What do you mean by that; "through routes"?

"Q. If, for example, in order to move a shipment from point A to point B, it were necessary to move the shipment over the lines of more than one rail carrier, and if there were a choice of say two destination rail carriers over which the shipment could move, when you route the shipment through from origin to destination, would you specify the destination carrier?

"A. We would specify in all cases the destination carrier.

"Q. Did that apply --

14,992 "A. In other words, in the routing we would specify all of the carriers that constituted the route from origin to destination.

"Q. Would the same thing apply with respect to motor carrier routing?

"A. Yes, it would.

* * *

INTRODUCTION OF AFFIDAVIT
OF L. L. STEARNS

* * *

15,025 THE COURT: What does it propose to show?

MR. McGLOTHLIN: This proposes to show, Your Honor, that Riss, at least, Mr. Stearns of Riss and Company, was well aware of the heavy impact that 60-TA, the order just read, would have upon the operations of Riss and Company.

THE COURT: Well, is it cumulative or not?

MR. McGLOTHLIN: I think not.

MR. WRIGHT: I think it has already appeared and there is no dispute about the fact that the order hurt Riss and Company. Nobody has ever suggested otherwise, as far as I know.

MR. McGLOTHLIN: We are certainly entitled to show how much it hurt Riss.

THE COURT: That is the purpose.

MR. WRIGHT: If this is supposed to be the purpose, of how much, it doesn't do that. It is merely a prediction made before the order went into effect as to what its effect would be, and we now have ample evidence, some of which is already in the record, and I assume Mr. McGlothlin has more, which shows what did happen, and I don't see what is going to be added by this prediction made prior to the time the order went into effect.

* * *

INTRODUCTION OF EXHIBIT
No. 1019

* * *

15,060 MR. McGLOTHLIN: By way of transition, Your Honor, the order under 60-TA, as I have said, went into effect December 28, 1953, and in a few minutes I am going to try to indicate what effect that had. Before doing so I wish to refer to depositions of the Riss officers again to show their knowledge or lack of knowledge that this was happening to them, and furthermore to show that Riss does not claim that anything that occurred out of 60 TA is damages in this lawsuit.

MR. WRIGHT: It's purely cumulative. That was admitted in one of the interrogatories' answers read earlier, that there was no such claim.

THE COURT: Is that so?

MR. McGLOTHLIN: That interrogatory answer has not been read earlier, Your Honor.

MR. WRIGHT: Well, it was never an issue in the suit since the trial began.

THE COURT: Well, I will have to tell the jury they will have to give the testimony the weight they think it's entitled to, plus listening to the evidence --

MR. SHEA: Your Honor, I would like to hear read back just what Mr. Wright has said.

15,061 THE COURT: Well, let's try this machine we have here and see if this thing works.

MR. McGLOTHLIN: Let me get away from it. It's too noisy.

THE COURT: This is our Clerk's pet.

(The Clerk accomplished playback on Soundscriber.)

THE COURT: Now, you have heard it.

MR. SHEA: Now, Your Honor, if I have heard it correctly, Mr. Wright is saying that he is now stating and has stated before that no losses to Riss arising out of the decision in 60-TA play a part in any claim he is making for damages in this lawsuit.

THE COURT: Well, let's find out from Mr. Wright if he contends that or not.

MR. WRIGHT: What I said was, and what has been said repeatedly, is that Riss does not claim that any of the damages that he is suing for here are the product of that or agrees that any injury to Riss which it sustained as a result of that final order in Sub 60-TA is damage which should be excluded from any award that is made to Riss & Company in this case.

* * *

DIRECT EXAMINATION OF MR. GORDON BY MR. GATES.

* * *

15,250 Q Mr. Gordon, you mentioned as the first of the factors which might enter into a study of comparability or lack of comparability, the territory served. Is a consideration of the traffic area served, in your judgment, important?

A Yes, sir.

Q Why is that so?

A Well, in the first place, you have entirely different operating conditions in various parts of our country. In the Rocky Mountain area, for example, there are difficult grades to overcome. That differs entirely from the conditions where the country is flat or rolling, and the grades are relatively small. Heavy grade means that you have to burn up more fuel; you have to use more braking power; your speeds are slower; and your operations, other things being equal, take more time and cost more.

On the other hand, you might have a company which operates in a densely-populated area, where there is heavy industrial concentration; traffic conditions there are different from what they are in the wide open country; there are a lot of stops and starts, and the time involved there is slow.

15,251 Q Mr. Gordon, did you make a study of the states which Riss & Company served as compared to the states served by the so-called competitors?

A Yes.

* * *

Q Mr. Gordon, would you please turn to the exhibit which is marked TEA's Exhibit 5062, and entitled, "States In Which Riss & Company, Inc. Operated In 1953, And Those In Which Its Six Competitors Operated."

Why, first, did you choose the year 1953 for the purpose of this study?

A Well, that was the year that Mr. Riss selected as the base year in his testimony.

Q Now, looking at TEA's Exhibit 5062, would you briefly outline to the ladies and gentlemen of the Jury what that exhibit shows?

A On the left-hand side are listed the twenty-two states in
15,252 which Riss & Company operated in 1953. To the right of that you will find the columns, one for each of the six competitors; and under those columns, you will find the word, "yes," or the word "no," opposite each state; and "yes," obviously means that the competitor operated in that state, and "no," means that they did not.

Down at the bottom of the sheet, you will find the summaries; and you will find that there are three companies -- Cooper-Jarrett in the first column, and Denver Chicago and TransAmerican in the last two columns -- each of those companies operated in twelve of the twenty-two states. Two of the companies, Eastern Express and General Expressways, operated in nine states; and Yellow Transit Freight Lines operated in eight states.

Q Were there any states in which all of the companies operated?

A Yes. There were three states in which all of the companies operated. Illinois -- you glance across there and you will see there is a "yes," opposite Illinois in each box -- Indiana is the same way; and Missouri is the same way. So that of the twenty-two states in which Riss operated, the six competitors also operated in only three of those states.

Q Did any of the so-called six competitors operate in states not served by Riss?

15,253 A Yes. Some of them did. The best example, I think, is probably Denver Chicago Trucking Company, which has routes to the West Coast, both the California area and the Pacific Northwest.

Q But you made no attempt to show those states?

A No.

Q Mr. Gordon, in your opinion, from the standpoint of geographical areas served, is Riss & Company comparable to the so-called six competitors?

A I would say, no, on the basis of this exhibit. But I think that the exhibit indicates that a further investigation should be made.

You take the mere fact that the companies operate in the same state. It may or may not be significant. Take, as an illustration, a company having rights, operating rights between Buffalo, New York, and Springfield, Massachusetts. That company operates in both New York and Massachusetts. Compare another company that has rights between New York City and Boston. New York is in the same state as Buffalo; Boston is in the same state as Springfield. But you certainly wouldn't say that those operations were comparable. One, in addition to operating in Massachusetts, also has to operate through Connecticut and Rhode Island; and the conditions on the routes may be entirely different, depending on the amount of industry, the kind of roads that there are, and the nature of the country.

15,254 Q Having considered generally the geographical areas served, as shown by TEA's Exhibit 5062, Mr. Gordon, did you then make any effort to get more specific? That is, did you try to reduce the study to the traffic centers which were served?

A Yes. We did that and tried to get the traffic centers or terminals served by the various companies.

Q Is the result of that study shown on TEA's Exhibit No. 5063?

A It is.

Q Would you please explain that exhibit to us, Mr. Gordon?

A This is a comparison of the important terminals operated by Riss & Company with terminals operated by the six competitors in the same cities.

The first column shows the fifteen most important terminals operated by Riss & Company in 1953; and those were determined by an analysis of the answers of Riss & Company from Schedule A, relating to the interrogatories of the Defendant Pennsylvania Railroad.

Then we --

Q Excuse me, Mr. Gordon. When you say the most important terminals of Riss & Company in 1953, what do you mean by most important?

15,255 A From the standpoint of the revenues.

Q The annual revenues?

A Yes. The interrogatories asked for those revenues, and the Schedule A gave those figures month-by-month. And we simply had those figures footed up for the year 1953, to determine which were the fifteen most important terminals.

Q When you say, "footed up," you mean added up?

A Yes.

Q All right. Now, how about the terminals operated by the six competitors in the same cities?

A There, we went to the Form A reports, which show the routes of each of these companies; and we found that these companies operated in the terminals where there is a "yes" shown in the body of this report.

Q You say they operated in the terminals where the --

A Operated to the cities. We did not have exact information on their terminals; but we assumed that where they showed operating to one of these cities, that they had a terminal in that city. Now, to the extent that they did not have terminals, this exhibit shows more comparability than really exists.

Now, there were two exceptions to the treatment that we used there, and those were Cooper-Jarrett and Denver Chicago, where we had information from their annual reports to the stockholders which actually showed where they did have terminals. So in the case of
15,256 those two companies, there are terminals actually at the points where the "yes" appears. In the others, it is possible that there are too many "yeses." We can't be sure of that.

Q Now, will you explain the exhibit, please, Mr. Gordon? Tell us what conclusions you draw therefrom.

A We followed the same method of designating comparability, that is, showing,"yes" or "no." And you will note that of the fifteen terminals listed as Riss' most important, TransAmerican is the only one that serves more than half of those terminals. Over in the last column, you will find the figure "9." That is nine out of the fifteen of those cities are served by TransAmerican.

In the case of the other five competitors, you will note that each one of them serves either six or seven terminals, less than half of the fifteen.

Q In your opinion, from the standpoint of terminals served, is Riss & Company comparable to the so-called six competitors as of the year 1953?

A In my opinion, it is not. There are several reasons why that is true. I pointed out one of them, and that is that we may have shown too many comparable items here, if any of these competitors has no terminal in one of these cities.

The other point is that even if a company has terminals
15,257 in the same cities, it doesn't mean that they are comparable or that they even provide service between any of these terminals.

Take, for example, St. Louis and Chicago. Those are two of the terminals shown on here. Riss has service, has operating rights

between St. Louis and Chicago. If you will look at Denver Chicago Trucking Company, opposite Chicago you will find a "yes." That indicates that Denver Chicago serves Chicago. And opposite St. Louis, you will also find a "yes." Now, as a matter of fact, the Denver Chicago Trucking Company does not have operating rights between St. Louis and Chicago.

Denver Chicago Trucking Company does have rights at Denver; and it does have rights at St. Louis. They have between Denver and St. Louis. So you see, in order to serve St. Louis from Chicago, Denver Chicago would have to operate way out to Denver and then back to St. Louis. Obviously, they wouldn't do that, because it is very circuitous and it would be very costly.

Q Is circuity important in connection with any comparison of this character, in your opinion?

A Yes, I think it is, because if you have two companies serving the same terminal, and one has a considerably longer route than the other one, the one with the longer route not only has disabilities on its own account in the way of longer transit time and greater cost,
15,258 but it also is at a disadvantage in getting traffic if the circuity is great enough, because the shipper will not want to ship by a line that takes longer for transit.

Q Mr. Gordon, you have testified that the fifteen cities shown in the left-hand column of TEA's Exhibit 5063 were the most important terminals for Riss & Company in the year 1953.

Is it or is it not the fact that the terminals shown for the other six companies are their most important terminals, respectively?

A I don't know. I had no figures on the volume of business done in these cities by the other companies.

Q In view of the fact that you do not have available the volume of traffic at the respective terminals, is it possible to determine comparability?

A Not so exactly. There might be seeming comparability here, and if you had the actual figures, it might develop that there was no comparability, that one carrier had maybe four or five times as much business between two points as another one.

Q Now, when you say, "seeming comparability," are you relating that, Mr. Gordon, on a city-by-city or terminal-by-terminal basis, or are you talking about over-all?

A Well, I was just talking about the terminal basis.

15,259 There is one further point that I would like to add, and that is you will note that there is only one terminal shown here which is served by all six competitors, and that is Chicago. That is the only line that has "yeses," all the way across.

Q Is route structure worthy of consideration in connection with a determination of comparability or lack of comparability?

A Yes, sir. In my opinion, it is an important factor.

Q Does this exhibit purport to show anything about route structure?

A No, sir.

Q Have you any comments about the route structure of any of the six so-called competitors as compared with Riss?

THE COURT: Excuse me, Mr. Gordon.

What do you mean by route structure?

* * *

THE WITNESS: The route structure means the kind and character of the routes over which a carrier has operating rights. Now, that structure may be such that it involves maybe just one line

15,260 between three or four important cities. On the other hand, it may involve a network of routes, where they are crisscrossing each other at relatively frequent intervals.

BY MR. GATES:

Q Mr. Gordon, I have turned around there for you, so the Judge --

THE COURT: Maybe it has been explained before. I don't remember. Maybe it has.

MR. GATES: No, I don't think it has, Your Honor.

I have had turned around, if the Court please, for Your Honor's benefit, and for the benefit of the Jury, Plaintiff's Exhibit 1, which shows the permanent regular route authority for Riss & Company in the transportation of general commodities.

Perhaps by reference to that, Mr. Gordon can explain the network concept a little better.

THE WITNESS: Well, as you can see, Riss & Company comes into the second example that I gave. It covers a large portion of the country East of Denver, and particularly in the Middle West and the East, it has routes that crisscross each other, routes that can be used alternately.

MR. GATES: This will probably work better than the end of your glasses (handing pointer to witness).

THE WITNESS: You can see in this area here where

15,261 the routes are just almost a spider's web.

And even out in here (indicating) --

BY MR. GATES:

Q Now, "out in here," where are you pointing to, Mr. Gordon?

A Out in Indiana, and particularly --all through the Middle West. The same is true to a certain extent even in the Southwest.

On the other hand, there are two other carriers which --

Q Do you want me to relieve you of that pointer?

A Thank you.

Q Excuse me.

A -- which have an entirely different route structure.

Q What are those two companies?

A Denver Chicago is one which -- well, just visualize Denver as the hub of the wheel, with spokes running out from there, and not very many spokes either. Actually, there are four: One that runs from Denver to Chicago, and the East Coast; another one that runs from Denver to St. Louis. Now, those operate to the East -- speaking in very general terms -- in the same area as Riss, part of the same area as Riss does. The other two spokes run off, one to Arizona and Southern California, and the other one in a northwest direction to the Pacific Northwest.

15,262 Now, those two spokes operate in a territory that Riss is not in at all. It is entirely outside of Riss' territory. And of the ones going to the East, where they have a straight shot to St. Louis, a straight shot to Chicago and the East Coast, with very few feeder routes, you can see that their structure is entirely different from the network that Riss & Company has.

15,263 Q What is the other company whose route structure is different particularly from that of Riss & Company?

A The other company is Cooper Jarrett and that is, in some respects, somewhat similar to Denver except that it doesn't have the spokes to the wheels.

Q When you say Denver, you mean Denver Chicago?

A Denver Chicago.

Q Very well.

A Cooper Jarrett operates from Kansas City to Chicago and then on to the east coast and they serve relatively few intervening cities, so that they have a straight shot operation and they have what is known as a relay system whereby they schedule their trucks out of the three cities, from Kansas City to Chicago and from New York to Chicago and from

Chicago to Kansas City west and New York east. This makes for a very efficient operation where they don't have a lot of other routes to serve. It also helps them in their operations because they line up their relay service to carry the normal expected traffic; then if there is additional traffic, they either hire trucks from the outside or they use piggy-back. Now, they use those two methods simply for the overflow traffic and not for their main business.

Q Are there any natural advantages which flow from having a network of routes such as those owned by Riss & Company, Mr. Gordon?

15,264 A Well, I think there are or there should be.

Q Does that kind of a network, in your experience, attract any particular type of traffic as against any other type of traffic?

A Well, I think it should in some ways attract all kinds of traffic because where you have such a large route mileage and where you serve such a large territory and where you serve a great many of the cities in that area, it is attractive to the shipper because when he is shipping, he says, well, I will use this company because it goes everywhere I want to go, it goes more places than the other companies. Now, that is, as I say, it is attractive to all shippers; I think it is particularly attractive to the less truckload shipper.

Q From the standpoint of route structure, do you have an opinion as to whether Riss & Company is comparable specifically to Denver Chicago and Cooper Jarrett?

A I would say that Riss & Company is as much unlike those two companies as is possible to get.

Q Now, in addition to considering the terminals, the states, and the route structures for purpose of analyzing comparability, did you make any investigation of the methods in which these companies conducted their operations?

A Yes, indeed.

Q Perhaps I should ask you one further question before we get into the business question, Mr. Gordon. From the standpoint of the
15,265 area served, the cities served, and the route structure, do you have an opinion as to whether Riss & Company can properly be compared with the so-called competitors chosen by Mr. Riss?

A Well, I think there are obviously so many differences in the territory served, the terminals, the cities served and the route structure, that any comparisons that develop from any of the results would be coincidental.

Q Now, let's talk about the investigation which you made with respect to the business conducted by Riss & Company as compared with the six competitors, and would you please tell us about that?

A Well, I believe I mentioned that before. That study went into the amount of business, the revenue and traffic statistics, the operating performance and the operating statistics and costs.

Q What is the first thing you generally look at in determining how much business a company does?

A Generally, there are two things that are normally looked at, operating revenues and revenue ton miles. I think revenue ton miles is really a better measure of the output of the company, of what they perform.

Q Would you turn, please, to TEA's Exhibit 5064, that is the next exhibit in the book. How does Riss compare in traffic and revenue ton miles during the period 1949 to 1953 as shown by TEA's Exhibit 5064?
15,266 A If you will look at the last line, you will find that Riss & Company is --

Q You say the last line, Mr. Gordon, do you mean the line at the bottom of the page or the line over to the far right?

* * *

THE WITNESS: The line at the bottom of the page shows Riss & Company and you will note that in each year of this period Riss &

Company had greater ton miles than any one of the competitors; it was at the head of the pack in each year. If you look over at the last column at the right of the exhibit, you will find the percent increase from 1949 up to
15,267 1953. There you will find, reading on the last line again, that Riss & Company was somewhat less than the group.

BY MR. GATES:

Q Mr. Gordon, I notice by looking at the column on the right which is headed "Percent Increase 1953 vs. 1949," that during that five-year period, the average of the six so-called competitors, in so far as increase was concerned, was 84.9, Riss & Company was 71.3, then as you take each of the individual companies, you will find that three of the companies, namely, General Expressways, Yellow Transit, Denver Chicago, had a rate of growth less than that of Riss & Company and the other three companies, namely, Cooper Jarrett, Eastern Express and Transamerican, had a rate of growth greater. Doesn't that indicate that Riss was a pretty good average?

A Yes, I think it does, except that you have to take into account that some of these companies were expanding their routes during this period, so that they had an advantage on Riss & Company in increasing their traffic. That is true of Eastern Express and it is also true of Transamerican Freight Lines which had the largest increase in route mileage over this period of any of those shown. Now, if that factor could be taken out, it would show Riss up to even better advantage.

Q From the standpoint of the volume of business as shown by TEA's Exhibit 5064, in your opinion, in 1953 was Riss & Company com-
15,268 parable to the six competitors?

A In my opinion, it was not.

Q Does Exhibit 5064 take any account of the development of the explosive business by Riss & Company during this five-year period?

A Yes, it takes account of it by reason of the fact that the explosives figures are included in the total, but it does not show those

figures separately because ton miles were not reported separately for the explosives business. When we come to the exhibit on operating revenues a little later, we will have the figures separately for explosives and commercial traffic and that will show the comparison of the increase in explosives traffic compared with the increase in other traffic.

Q In making a comparison of one trucking company against another, is it important, in your judgment, to consider the authorized route miles which a carrier has the right to serve?

A Yes, I think it is, because after all that is how they make their living, it is how they get started and how they keep operating.

Q Did you make any examination of the authorized route miles of the various carriers?

A I did.

Q Is that shown on TEA's Exhibit 5065?

A Yes, sir.

Q Would you please turn to that exhibit, which is entitled
15,269 "Authorized Route Miles" and tell us about it, what that exhibit shows? First of all, maybe we had better define terms. What do you mean by "Authorized Route Miles (Regular) Unduplicated"?

A Well, that means that the route miles reported are what is called regular route miles, which in turn means that temporary authority mileage is not included, or mileage on irregular routes. In addition, the word "unduplicated" means that where a route duplicates in part another route, the mileage is not counted twice. For example, a carrier having rights from Washington here to Baltimore and also having rights from Washington to Philadelphia via Baltimore, you would not count the Washington to Baltimore part twice, even though he used that route all the way through. In other words, if that carrier wanted to sell his rights to another operator from Washington to Baltimore, he could sell that 40 miles of rights but he would still be able to operate there because he has rights from Washington to Philadelphia. So that for the purpose of selling the rights, it is proper

to duplicate the miles, but for the purpose of measuring the actual miles of highway that he has rights over, it is proper to remove the duplications.

THE COURT: Excuse me, just a question of the witness. On this Exhibit 5065, Mr. Gordon, under the six competitors, take the first one, Cooper Jarrett, Inc., 1949, you have 4,813; does that mean 4,813,000?

15,270 THE WITNESS: No sir. These are route miles, these are absolute figures. That is the total mileage that they have authority to operate.

THE COURT: I see. All right.

THE WITNESS: All added up together.

BY MR. GATES:

Q In order that we may have no question about that, let's go back to the illustration which you used a moment ago, namely, of a route from Washington to Baltimore and a route from Washington to Philadelphia, and let's assume the distance from Washington to Baltimore is 40 miles and from Washington to Philadelphia is 125. Now, how many authorized route miles, regular, unduplicated, does that company have?

A 125 miles. That is because the 40 miles is included in the 125.

Q Mr. Riss has testified in this proceeding, Mr. Gordon, not once but several times, that his company had 36,000 route miles and TEA's Exhibit 5065 shows that at no time during the period from 1949 to 1953 did Riss & Company have more than 21,226. Can you explain the apparent discrepancy?

A Well, there is really no discrepancy, we are both right.

Q What do you mean, you are both right?

A Well, Mr. Riss is talking about the miles he had from the standpoint of the miles he has available in case he wants to sell his rights. I am talking about the unduplicated mileage which is reported on

15,271 Form A.

Q Now, going back to the illustration we had of the 40 miles from Washington to Baltimore and 125 miles from Washington to Philadelphia, you say it is 125 miles; how much would Mr. Riss say, in talking about it in terms of duplicated route miles?

A He would say it is 165 miles.

Q And that, in your opinion, explains the apparent discrepancy between your figures and Mr. Riss's figures?

A Yes, sir.

Q What conclusions do you draw from TEA's Exhibit 5065, Mr. Gordon?

A Well, in the first place, Riss is substantially greater than any of the others in the number of route miles that it operates, and that applies in each year and it applies to every one of the competitors. You can get some very contrasting figures by contrasting Riss &Company with Cooper Jarrett, for example, or Eastern Express. Riss & Company has from four to five times the mileage that Cooper Jarrett has, and about the same difference between Riss & Company and Eastern Express. Riss & Company is about two and a half times as large as Yellow Transit and Denver Chicago Trucking Company, and it has about 60%, roughly, more authorized miles than General Expressways and Transamerican. So you see there is a very large difference here in the authority that these various companies had, Riss & Company being very much larger than any of the others in their regular authorities.

15,272 Q You mentioned, in connection with your testimony with respect to revenue ton miles, that there were certain acquisitions which affected the revenue ton miles of Eastern Express and Transamerican. Is that fact shown on TEA's Exhibit 5065?

A Yes, it is. In the last column you will notice that the two companies that show the largest increase from 1949 to 1953, are Eastern Express, the second company, which has an increase of 22.9%, and Transamerican Freight Lines, the last of the six companies, which has an increase of 23.4%.

Q Mr. Gordon, is the difference in authorized route miles in the year 1953 of such significance as to have any effect upon comparability or lack of comparability of Riss & Company to its six competitors?

A Yes, it is.

Q What is your opinion with respect to comparability of Riss & Company to these others in terms of route miles?

A Well, I think it is obvious that when some of these companies have around one-fourth of the mileage of Riss & Company and none of them nearly approaches it in mileage, that it is obvious that there is no comparability.

Q Do you believe it is appropriate, Mr. Gordon, to attempt to compare a company with roughly 21,000 route miles against a company that has only 13,350 route miles?

A No, sir.

Q Would that same opinion exist with respect to a company
15,273 that has substantially less than half of the route miles of Riss & Company?

A Yes, even more so.

Q Did you give any consideration, Mr. Gordon, to the question of traffic density?

A Yes, I did.

Q Would you please tell the Court and jury what you mean by the term "traffic density"?

A Traffic density means the number of tons passing an average point on the trucking system during the year. Traffic density is something that is important in all forms of transportation; probably the one that you are most familiar with is traffic density on the highways and you know that in the peak hours that the automobile traffic is very heavy, and in the off hours, it is light. Now, when you say that the traffic in the

peak hours is four times as much, say, at 8:30 in the morning it is four times as much as it is at 11 o'clock in the morning, you are talking about traffic density. What you are really saying is that the traffic density is four times as much in the peak hour as it is in the off hour and, of course, you would get much greater comparisons if you made a comparison of the traffic density, say, at 3 o'clock in the morning. I think another way to explain it is from this next exhibit.

Q Are you referring to TEA's Exhibit 5066?

A Yes.

15,274 Q Which is entitled "Traffic Density (Revenue Ton Miles per Route Mile -- in Thousands)." Now, first, Mr. Gordon, just to be sure we all understand each other, the figure "29" which appears opposite Cooper Jarrett under the year 1949, in other words the top figure, means 20,000 revenue ton miles passed a given point on the route of Cooper Jarrett in the year 1949; is that correct?

A I am not sure that the figure was correct. Would the reporter read it, please?

(Part of the question was read as follows: "...just to be sure we all understand each other, the figure '29' which appears opposite Cooper Jarrett under the year 1949, in other words the top figure, means 20,000 revenue ton miles...")

MR. GATES: 29,000, correct that, please.

THE WITNESS: That is correct.

BY MR. GATES:

Q Now, with that background, please tell us what conclusions you draw from TEA's Exhibit 5066?

A I think this question of density might be a little clearer if we look at the column headed "1953." That shows the revenue ton miles in thousands per route mile; Cooper Jarrett, for example, is 57,000. Now, I have made some calculations to show how many fully loaded trucks, that means per day, and I think if --

Q. How many fully loaded trucks during what period, a year or
15,275 a day? A. Per day.

Q. And what kind of a load have you got in these trucks when you say a fully loaded truck?

A. I would assume a 15 ton load and I am doing this to bring out the difference in the number of trucks per day that goes on the ordinary mile of highway of each of these carriers.

Q. What do those figures reveal?

A. Well, if you have pencils and want to mark the figures in, in front of the ton miles per route mile in thousands, Cooper Jarrett, in front of 57, you would mark 10, they had 10 trucks a day on the average over their line.

Q. Did that mean 10 trucks in each direction, or 10 trucks in both directions?

A. That is 10 trucks in both directions or an average of 5 in each direction.

Q. All right.

A. Eastern Express has 23 trucks per day; General Expressways, 3; Yellow Transit, 4; Denver Chicago, 11; Transamerican Freight Lines, 7; subtotal for the group as a whole, 8; Riss & Company, 5.

Q. Now, when you arrive at the figure of Riss & Company, 5, does the figure take into account the additional mileage which Riss & Company operated by reason of the temporary authority it had?

15,276 A. No, it does not take that into account.

Q. Was that mileage available to you?

A. No, sir, that mileage is not required to be reported to the Interstate Commerce Commission on Form A.

Q. If that mileage were added, irrespective of the amount, what would the effect be upon the traffic density of Riss & Company during the year 1953? Would it serve to increase or decrease the traffic density?

A. Well, it would serve to decrease the traffic density figures shown on 5066.

Q. Did I understand you to say, Mr. Gordon, that this was the average number of ton miles which passed a given point each day for each of these companies?

A. The given point being the average point, yes.

Q. That is right. Now, Mr. Riss testified in this proceeding at page 1488-1489, in answer to some questions from Mr. Ball as to the number of trips these trucks were operating during the period 1951 to 1953, that on the turnpike they had a truck every eight or ten minutes of the day. Now, what effect would having a truck every eight or ten minutes per day have upon the traffic density of Mr. Riss's operations on places other than the turnpike?

A. Well, that sounds so great that one might almost suspect that some places he didn't have any density; but certainly it would lower the density very much on many of these routes.

15,277 Q. Other than the turnpike? A. Other than the turnpike.

Q. In your opinion, Mr. Gordon, from the standpoint of traffic density, could Riss & Company properly be compared with the six competitors in the year 1953 or during the period from 1949 to 1953?

A. No, sir; Riss & Company is well below the average of the six competitors. He is even further below Cooper Jarrett, Eastern, and Denver Chicago, all of whom, incidentally, operated at a profit in this period.

Q. Well, is it fair to conclude from this Exhibit 5066, Mr. Gordon, that either Riss had a number of poor routes or that he was not doing much to develop some of those routes?

A. I think that is a very fair conclusion to make.

Q. Now, you testified also that in determining volume of business, a second important factor other than revenue ton miles was the operating revenues. Did you prepare an exhibit with respect to operating revenues during the period 1949 to 1953? A. Yes, sir.

Q. Are the results of that study shown on TEA's Exhibit 5067?

A. They are.

Q. How does Riss & Company compare in terms of operating revenues with the so-called six competitors?

A. Riss & Company is substantially larger than any of the com-
15,278 panies shown here. It is more than double Cooper Jarrett, General and Yellow, and substantially more than the other three.

Q. From the standpoint of operating revenues, what is your opinion with respect to the alleged comparability of Riss & Company to the six so-called competitors?

A. In my opinion, the contrast is too great to allow any comparability.

Q. Will you direct your attention, please, for a moment, Mr. Gordon, to the two items entitled "Riss & Company, Inc., Total" and "Riss & Company, Inc., Commercial" at the bottom of the exhibit. What are you attempting to show by the differentiation which you made there?

A. I am attempting to show the facts with respect to Riss & Company's revenues during this period and to point out that, whereas their total revenues increased 111.9 percent, that their commercial revenues only increased 32.3 percent. The difference between these two lines, of course, is the explosives, the revenue from explosives, which is not shown on the exhibit.

Q. If you subtracted for the year 1949, for example, the commercial business which totaled $13,341,000 from the total business of $13,736,000, you would get a figure of about $395,000, and that represents the explosives business? A. That is correct.

Q. And in the year 1953, you would subtract the $17,652,000 from the $29,108,000, as a consequence of which you have a figure of roughly $11,500,000; is that right?

15,279 A. Yes, the exact figure is $11,456,000.

Q. Have you computed the rate of increase of the explosives business as compared to the commercial business during the period from 1949 to 1953?

A. Yes. Of course, it is tremendous, it is 2,900 percent.

* * *

Q. Were you able to determine what volume of explosives traffic
15,280 was handled by any of the six competitors?

A. Not from the Form A's, the Form A's do not show that information, but Mr. Riss in his testimony stated that very little explosives business was handled by any of these six competitors.

Q. Well, from your investigation and from all the materials which you consulted, did you find anything to indicate that any of the so-called six competitors had a volume of explosives business in any way comparable to that handled by Riss & Company?

A. No, the evidence was all to the contrary.

Q. Did you, in connection with this study, also consider the average operating revenue per ton mile? A. Yes, I did.

Q. Is the result of that study shown on TEA Exhibit 5068?

A. Yes, sir.

Q. Now, what do you mean by "Average Operating Revenue per Ton Mile"?

* * *

15,283 A. Perhaps the easiest way of describing it briefly is to say that it is a measure of the average rate per ton-mile, the tariff rate. It is obvious that it is not a specific tariff rate; but it is an average of a mixture of the various commodities that are carried, and they average out to this tariff rate.

Q. Maybe you ought to explain the difference between "tariff" and "rate."

A. Well, "tariff rate" is really one term. It is the rate per 100 pounds that is quoted in the tariff.

Q. And that is the book that is published by the company and filed with the ICC that says what you have got to pay for the movement of a hundred pounds? Is that right?

A. That is right. And this really is what happens when you add all of the revenue that you get from those tariff rates together, and divide by the ton-miles. You get the average revenue per ton-mile; or you might call it the average rate, tariff rate, per ton-mile.

Q. Now would you go ahead with the exhibit, please, Mr. Gordon.

A. During this period, looking at the bottom of the exhibit, where it shows Riss & Company, you will notice that Riss was above the average for the group throughout the period, and that Riss' revenue per ton-mile increased more over the period than any one of the group. In the last column you see the percentage increase, 23.8 per cent. That 15,284 means that they were getting more on the average per ton-mile; that their increase was greater than the other carriers. You see that the group increased only seven and a half per cent, and Riss about three times that, or 23.8 per cent.

Now some of the increases here in revenue per ton-mile may be due to rate increases. But that isn't the answer with respect to Riss, because --

Q. You mean a general, across-the-board rate increase?

A. General rate increases that would apply throughout the area. If that had been the case, you would expect the other companies to have increased their revenue per ton-mile in the same way. So that there must be some other reason for this change.

There are several factors that affect this average. I think probably the most important is the average haul. But there are other factors, too, such as the proportion of less-truckload freight, which carries a much higher rate per 100 pounds; and the whole question of the commodity mix, which means the proportions you have of various commodities.

If you have a larger proportion of high-rated commodities, your revenue per ton-mile will be greater. On the other side, if you have a large proportion of low-rated commodities, your revenue per ton-mile will be lower.

But getting back to what I think is the most important factor, that is
15,285 the average haul. The reason for that is that --

Q. What do you mean by "average haul"?

A. The average distance that a shipment is carried, or the average distance that a ton is carried.

A company with a long average haul will have a low revenue per ton-mile. A company with a short average haul will have a high revenue per ton-mile. The reason for that is that the company with a short haul has two terminal expenses that are pretty close together. Say the average haul is only 100 miles. He has a terminal expense at the beginning, and he has the pickup and delivery of the traffic, and the billing, and the handling. And then at the other end he has the terminal expenses, the delivery of the freight. So that when you compare that with the haul, it is a large part of the total expense.

For that reason rates are built so that they reflect that. And as your haul gets longer, the total rate gets smaller per mile.

I have put down an example here, and this may be a little hard to follow, but I hope you can follow it. Let us take two shipments, each one of them 10 tons. The first one is going 100 miles. The second one is going 200 miles.

Now let us assume that the rate on the first one, the freight charges, are $60. That is the one that goes a hundred miles. Let us assume the freight
15,286 charges on the second one, which is going 200 miles, are $100. You will note I don't say they are double, that they are $120, because of this terminal situation.

So you have $60 that you are paying for the 10 tons that go 100 miles, and $100 that you pay for the 10 tons that are going 200 miles.

Now the reason for that is -- and these are assumptions -- but let us assume that the portion of the rate in each of those that represents the terminal handling is $20. In other words, this first hundred-mile shipment, where the freight is $60, let us assume that $20 is to cover the terminal. That leaves $40 for the line haul.

In the second one, the same $20 out of the $100 covers the terminal, because the terminal cost and the terminal rate is the same, whether it is 100 miles or 200 miles. You do the same kind of service. So, out of the $100, that leaves $80 for the line haul.

So, you remember, the first one we had $40 left for the line haul, and this one we have $80 left, because we are hauling it twice as far. So that the line-haul part of it is $40 for a hundred miles and $80 for 200 miles. But, because the terminal expense is the same, it makes the total rate $60 for the 100-mile shipment and only $100 for the 200-mile shipment.

15,287 Now that works out for the first one, there being 10 tons at a hundred miles, that gives you 1,000 miles. That is easy to divide, and when you divide it into the $60 you get six cents a ton-mile. You multiply the tons by the miles to get ton-miles, and divide that into the money, and get six cents a ton-mile.

You take the second one, still at 10 tons but going 200 miles. So there are 2,000 miles; and you divide that into --

Q. You mean 2,000 ton-miles?

A. Two thousand ton-miles. And you divide that into the $100, and you get five cents. That illustrates the fact that as the distance increases, the ton-mile revenue decreases. It is six cents on the short-haul one and five cents on the longer haul.

Q. By reference to TEA's Exhibit 5068, for the year 1952, and speaking specifically of Yellow Transit and Denver Chicago, can you again illustrate the point, Mr. Gordon?

A. Yes. Yes, that is a very good illustration. You will notice that Yellow Transit Freight Lines' revenue per ton-mile in 1952 was 5.28. Have you found that figure?

Just below that, Denver Chicago Trucking Company is 3.83 cents. That is quite a substantial difference. But if you look over on 5069, the next exhibit, that we haven't talked about yet, you will see the average haul, under

15,288 the column "1952," down opposite Yellow Transit, you will see that Yellow Transit's average haul was 575 miles, and Denver Chicago's was 1,533 miles. So there Denver Chicago's average haul was nearly three times that of Yellow Transit.

When you look back at Exhibit 5068 you will see that Denver Chicago, with its long hauls, had a substantially lower revenue per ton-mile.

Q. The second factor you mentioned that had a bearing upon average operating revenue per ton-mile, Mr. Gordon, was that of less-truckload shipments. Would you explain that, please.

A. Well, less-truckload shipments, as I said, carry a higher rate and a higher revenue per ton-mile. That is by reason of the fact that there are a great many additional expenses in connection with the handling of less-truckload freight. The billing expense and the collecting expense for each shipment cost just about as much as the billing expense and the collecting expense for a truckload shipment, which will be much larger in quantity and involves much more in the way of revenue.

Q. Now the third factor you mentioned --

A. In addition to that, --

Q. Excuse me.

A. -- the pickup expense and the terminal handling and the
15,289 delivery expense at destination, together with the terminal handling, are expenses which are not usually involved on truckload business.

Q. The third factor you mentioned, Mr. Gordon, with respect to having an important effect upon the average operating revenue per ton-mile, was the commodity mix. What do you mean by that?

A. That relates to the proportions of low-rated traffic and high-rated traffic. A bulk commodity would normally be a low-rated commodity, and a good example of a high-rated commodity would be a refrigerated product. Depending upon what proportion of these two kinds of commodities you get, would depend your revenue per ton-mile.

Q. Mr. Gordon, you testified a moment ago that as the average haul increases there is a tendency for the average operating revenue per ton-mile to go down. And you likewise testified that as the less-truckload shipments went up, the revenue went up.

Now I notice by an examination of Exhibit 5068 that Riss & Company's average operating revenue per ton-mile went up, and likewise its average haul went up, by an examination of TEA's Exhibit 5069. Can you explain that apparent exception to the rule?

A. Yes. What you say is right, that ordinarily the average haul should go in the reverse direction from the revenue per ton-mile. It did not
15,290 in the case of Riss throughout this period. Likewise Riss' LTL traffic decreased. So that the answer must be in the commodity mix.

In my opinion the reason for this increase in the revenue per ton-mile was the increase in the high-rated explosives traffic. As you have seen, the commercial business was a small part of the total business during this period, and there is no indication that there was substantial change in the commodity mix of the commercial traffic. We do know about the tremendous increase in the explosives business, which was a high-rated commodity. Therefore, in my opinion, the change in the revenue per ton-mile, the increase, is due to that factor.

Q. Mr. Gordon, you stated a moment ago that the commercial traffic represented a small part of the business of Riss & Company in the period 1949 to 1953. Did you mean that, or did you mean that the relative rate of growth of the commercial business, as distinguished from the explosives business, had been the fact?

A. Well, I meant both in some years, and the rate of growth in others. In 1949 obviously the commercial business was the most important part of Riss' traffic. Actually in 1953 Riss' commercial traffic had got down to the point where the explosives traffic was greater than its commercial, truckload traffic.

15,291 Q. What do you mean by that?

A. I mean that of the total truckload revenue received by Riss & Company in 1953, 52 per cent of it represented revenue from explosives traffic and only 48 per cent represented revenue from commercial traffic.

Q. Just to be sure the record is clear, did you separate the volume of less-truckload business from truckload business?

A. Yes, sir.

Q. And having set aside the less-truckload business on one side and the truckload business on the other side, you determined that 52 per cent of the full trucks were carrying explosives? Is that what you mean?

A. On a revenue basis, yes.

Q. Mr. Gordon, is average operating revenue per ton-mile an important or an insignificant measure of the operations of a company in its operating results?

A. It is an important measure; but, as you have seen, it will fluctuate a great deal as between the long-haul and short-haul carriers.

Actually, even with lower revenue per ton-mile, a long-haul carrier may well show a good profit because his expenses per ton-mile will also be lower. Likewise a short-haul carrier which will have high revenue per ton-mile will have higher expenses per ton-mile. But, on the other hand, if he is efficiently operated, he may well have just as much
15,292 profit as the long-haul carrier.

Q. Mr. Gordon, you have already referred to TEA's Exhibit 5069, which is entitled "Average Haul (Miles)." Do you have any further comment to make with respect to TEA's Exhibit 5069?

A. Yes. There are striking variations in the average haul of these companies. Riss was about the same as the group as a whole throughout the period, but showed tremendous variations from the others. For instance, Denver Chicago is more than double Riss' haul. Cooper Jarrett and Eastern Express are substantially in excess of Riss. Transamerican and General Expressways have very much lower average hauls than Riss. And Yellow Transit starts out with a substantially lower haul, but increases it throughout the period, so that it is within striking distance of Riss in the 1953 year.

Q. Mr. Gordon, I neglected to ask you one question with respect to the less-truckload traffic when we were talking about Exhibit 5069. Generally speaking, is LTL traffic profitable or unprofitable?

A. In my opinion LTL traffic is a profitable traffic.

Q. And what effect, as a rule, does the average haul have upon traffic profitability? Do you understand the question?

15,293 A. Yes. I don't think average haul necessarily has any particular effect on profitability, because there are profitable long-haul carriers and

there are profitable short-haul carriers, just as there are unprofitable ones in each group.

Q. Mr. Gordon, directing your attention to TEA's Exhibits 5068 and 5069, which are, respectively, "Average Operating Revenue Per Ton-Mile" and "Average Haul," in your opinion is Riss & Company or was Riss & Company comparable to the so-called six competitors during the year 1953?

A. Well, in connection with Exhibit 5068, I think that General Expressways, Yellow Transit Freight Lines, and Trans-American show some comparability with Riss & Company. The other three companies on the exhibit do not.

Q. How about with respect to average haul?

A. With respect to average haul, there is one company there, Yellow Transit Freight Lines, which in my opinion could be said to be somewhat comparable to Riss & Company in 1953, Yellow having an average haul of 668 and Riss & Company 712. The other five companies are quite dissimilar to Riss & Company in their average haul.

Q. Would your answer be the same with respect to Riss as compared with its competitors or contrasted with its competitors for the overall period of 1949-1953?

A. Well, I think generally the answer would be yes, except that 15,294 in the earlier period Yellow Transit Freight Lines was not so comparable to Riss & Company. There is one other comment I would like to make on this exhibit, if I may.

Q. Which one are you referring to? A. To 5069.

Q. Very well.

A. You will note that the subtotal line shows average hauls which are during the period quite comparable to Riss & Company. That is a weighted average haul for these six companies. But when you look back in the individual companies you find out that with the exception of Yellow Transit, in just about one year, the other companies are not comparable at all.

That is an example, in my opinion, of the distortion arising from averaging companies. I don't think the subtotal means much of anything,

except that it does show a trend. But it certainly doesn't represent, while it is a weighted average of the competitors, it is like adding apples and oranges together and coming out with some new hybrid fruit.

Q. Will you now turn, please, Mr. Gordon, to TEA's Exhibit 5070, which is entitled "Operating Revenues Per Vehicle-Mile." We have just been talking in terms of TEA's Exhibit 5068, about average operating revenue per ton-mile. What is the difference between that and average operating revenue per vehicle-mile?

15,295 A. The difference is that the revenue per ton-mile counts only actual freight being transported. Whereas the revenue per vehicle-mile takes in the vehicle-miles, whether they are loaded or empty.

Q. Can you give us an example?

A. Well, let us take two shipments from, say, Washington to Chicago, and assume it is 750 miles. One shipment has five tons and the other has 10 tons.

Now the revenue per ton-mile for those would be exactly the same, because we are assuming the same commodity and the same rate. So whether you have five tons or 10 tons, the revenue per ton-mile is just the same.

But when you are talking about the revenue per vehicle-mile, in the 10-ton shipment you get twice as much money. So the revenue per vehicle-mile for the 10-ton shipment would be double what it was for the one with the five tons.

In other words, the loading is a factor there. Likewise, if you ran a tractor and trailer empty between two points, you would have to count those vehicle-miles, even though you didn't get any revenue. And you take the revenue on the loaded move and add the vehicle-miles for the loaded move to the vehicle-miles for the empty move, if it was in connection with that movement. Your revenue per vehicle-mile would be decreased because

15,296 of having to deadhead the tractor and trailer.

Q. Let me take another illustration. Assume, Mr. Gordon, that you have two trucking companies operating between Washington and Chicago, with the same mileage which you just used, 750 miles, and each of them takes

10 tons. One of the trucks gets a load coming back of 10 tons, of the same commodity, just for the sake of my illustration; and the other truck comes back empty. What is the difference, if any, in the ton-mile revenue?

A. The ton-mile revenue is exactly the same.

Q. What is the difference in the per-vehicle-mile revenue?

A. The vehicle-mile revenue is cut in two by the company that has to operate the deadhead mileage.

Q. Now would you explain to us, please, what conclusions you draw from TEA's Exhibit 5070. How does Riss & Company compare with the other six carriers set forth in that exhibit?

A. Could I explain first that this exhibit is important because it shows the revenues per vehicle-mile, which control a large page of the cost? The vehicle-miles control a large part of the costs of the trucking company. Fully half of the costs are related to vehicle-miles; and the cost for operating an empty vehicle-mile is nearly as much as for a loaded vehicle-mile.

15,297 There is a little difference in the fuel consumed. But you still have your driver, and you are still running miles on the tires, and all that. So that the cost for the empty miles is nearly as much as for the loaded miles.

Now as for the comparison of Riss & Company, you will note that they show up very poorly on this exhibit, compared to the group. Each year the revenue per vehicle-mile is below that of the group.

Comparing Riss & Company with the individual companies, you will notice that in 1949 Riss was fifth in the list. It was lower than four companies. It was lower than Cooper Jarrett, Eastern Express, General Expressways, and Transamerican.

By 1952 Riss had dropped still lower. It was in last place, lower than anybody else; and it remained in last place in 1953. If you will remember from Exhibit 5068, --

Q. That is the exhibit entitled, "Average Operating Revenue per Ton-Mile"?

A. Yes. If you will just glance at the last line on that again, it will recall to you that Riss was doing very well on their operating revenue

per ton-mile; they were going up during this period, and had increased more than the competitors.

15,298 But here we come to the operating revenues per vehicle-mile, and they are going down. Now the only thing that that can mean is that they were operating a lot of unbalanced traffic; that they had a lot of unbalanced traffic and were operating deadhead mileage.

I believe the record shows some testimony regarding the operation of empty vehicle-miles; and this exhibit, combined with 5068, corroborates that.

Q. When you say "this exhibit," you are referring to TEA's Exhibit 5070? A. Yes.

Q. Is it significant in your opinion, Mr. Gordon, that during the period from 1949 to 1953 the average of the six so-called competitors increased from 44-3/4 cents to 53-1/3 cents, while Riss & Company's increased from roughly 41.6 to 45-1/2 cents?

A. I think it is. I think that it indicates that, generally speaking, the competition was making a much better showing on operating revenues per vehicle-mile than was Riss & Company. That would indicate to me that they were probably not involved in so much of an imbalance of traffic as was Riss.

Q. You referred in your testimony a few moments ago to the impact of less-truckload revenues upon the operating results. Did your study include a review of the less-truckload shipments of the various carriers?

15,299 A. Yes, it did.

Q. Are the results of that study reflected in TEA's Exhibit No. 5071? A. Yes, sir.

Q. Would you please turn to that exhibit. First, how are LTL or less-truckload shipments defined?

A. They are defined by the Interstate Commerce Commission as those shipments weighing less than 10,000 pounds per shipment.

Q. Is that also true of railroads as well as motor carriers?

A. Yes. A railroad's less-carload shipments are defined in the same way and with the same weight limit.

Q. In other words, 10,000 pounds in both cases is the breaking point between less-truckload or less-carload shipments and full truckload or full carload shipments?

A. That is right. And that is in accordance with the Commission's ruling for the reporting of such figures for the commodities and statistics reports.

Q. Would you please explain what this Exhibit 5071 shows.

A. Well, it shows a general level trend for Riss & Company, while the competitors were increasing their LTL business.

15,300 Q. What do you mean by a "general level trend" for Riss & Company?

A. Well, they had an increase of only four per cent over this five-year period, whereas the competitive group increased 67 per cent.

Q. This is in the revenues from less-truckload shipments?

A. That is right. I would like to point out that in 1949 and 1950 Denver Chicago was the only company that had more less-truckload revenues than did Riss. But by 1953 Riss was down in fourth place.

Q. Did your study indicate any reasons for the disparity so far as Riss & Company is concerned, as compared with the pattern of the balance of the industry, -- A. Yes.

Q. Or of these six carriers, I should say.

A. Yes. The record shows that Riss imposed a $5 minimum on LTL shipments, in order to restrict small shipments. Apparently Riss & Company wanted to have other trucking companies -- or somebody else, at least -- handle the small lots. And this policy antagonized the shippers and caused them to take in some cases all and in some cases most of their business away from Riss. That is shown by testimony and by exhibits

15,301 already in the record.

There is one other factor that had a bearing, in my opinion, on Riss' LTL traffic, and that related to the closing down of some 10 of its

terminals. The terminal, you understand, is a place where the LTL is handled. The pickup truck goes out and picks up the traffic for the various customers and brings it back to a terminal. The function of the terminal is to have those shipments handled and sorted out.

A shipper may have shipments for maybe 15 different cities. They would all go into this pickup truck and come to the terminal. Then the terminal sorts the shipments out, and they are moved to the proper door so that they can be loaded onto the truck that is going to each of these 15 terminals. That would mean that that traffic, those shipments, that tonnage, packages, would have to be distributed around to 15 different loading platforms.

Q. Mr. Gordon, Exhibit 5071 shows the percentage of increase. Did you make any investigation to determine what proportion of the total revenue which Riss & Company earned, let us say in the year 1953, was as compared to the proportion of total revenue of the other companies which was attributable to less-truckload shipments?

A. Yes, I did.

Q. And what were the results of that investigation?

A. In 1953 Riss & Company's LTL amounted to only 24 per cent 15,302 of its total revenues. The other companies ranged from 38 per cent to 68 per cent of their total revenues. And the group as a whole, the truckload revenues amounted to 55 per cent of the total revenues.

* * *

A. I was talking about the closing of the 10 terminals from July 1950 to April 1953.

Q. Did you make any investigation of what kind of revenues those 10 terminals were earning at the time they were closed?

A. Yes. I obtained that information from answers to PRR interrogatories, and found that in 1951 the revenues from the terminals closed, between December 1951 and April 1953, amounted to two and three-quarters millions of dollars in that one year.

Q. Now from the standpoint of LTL traffic, do you think it is appropriate to attempt to compare Riss & Company with the six so-called competitive carriers?

15,303 A. I think that there is some degree of comparability between Riss & Company and General Expressways and Yellow Transit Freight Lines. But with respect to the other four competitors, I don't think there is any basis for comparison.

Q. What was the trend in the trucking industry with respect to LTL shipments during the period from 1949 to 1953? A. It was upward.

Q. Did you prepare an exhibit reflecting that upward trend?

A. Yes, sir.

Q. Is the result of that study shown in TEA's Exhibit 5072?

A. Yes, along with the comparison of the trend in the railroad less-carload freight, as well as the trend of the freight forwarder revenues of Class A freight forwarders.

Q. Please explain to us what this comparison of less-truckload, less-carload and freight-forwarder revenues shows.

A. From 1950 to 1953, --

Q. First of all, why didn't you use 1949?

A. The figures were not available for that year, as 1950 was the first year that the motor carriers were required to report LTL revenues separately.

Q. What happened to LTL revenues as between the truckers, the railroads and the freight forwarders during the period 1950 to 1953?

15,304 A. The motor carriers increased their revenues 31 per cent. The freight forwarders increased theirs 32 per cent. But the railroads lost revenues; theirs went down nine per cent.

Q. Mr. Gordon, excuse the interruption; but am I correct in reading this exhibit that in the year 1950 the inter-city motor carriers of general freight received revenues of over a billion dollars?

A. That is correct.

Q. And they increased from 1950 to 1953 by something over three hundred million dollars? A. That is right.

Q. Go ahead, please, with your explanation.

THE COURT: Excuse me. Maybe this has been explained and, if it has, I have forgotten; and the jury will rely on their own recollection. The third item there says "Class A Freight Forwarders." Will you explain what you mean by "Class A Freight forwarders." Has that already been done?

* * *

BY MR. GATES:

Q. Please explain what a freight forwarder is and does.

A. A freight forwarder collects and assembles small-lot ship-
15,305 ments and consolidates those shipments into carload or truck-load lots, and then ships them either by rail or truck to the destination. At the destination they perform the similar service by breaking up those shipments and delivering them.

THE COURT: Can you give us an example? Who would be a freight forwarder?

THE WITNESS: Well, there are a number of them. There is the Acme Freight Forwarding Company. There are quite a number of them. These Class A forwarders are those that have over a hundred thousand revenues.

MR. GATES: Excuse me for interrupting, Your Honor, but I think there is one thing that might be said in addition with respect to freight forwarders. A freight forwarder operates more or less in the category of a broker, and has his own tariff rates which he publishes and files with the Interstate Commerce Commission, just as the railroads and the truckers themselves do, because he performs the service which Mr. Gordon has just explained, of picking up the shipments, consolidating them, taking them to the terminal, then breaking down the consolidation and redistributing the loads that he has picked up at the point of origin.

THE COURT: Thank you.

THE WITNESS: May I add?

THE COURT: Yes.

15,306 THE WITNESS: Most of the shipments of the forwarders go by rail; but there is a substantial amount that go by truck.

THE COURT: All right.

THE WITNESS: There is a small amount that goes by water lines.

BY MR. GATES:

Q. And even a smaller amount by air?

A. I don't think any of these. I think there is a different class of forwarders on the air shipments. They didn't report any going by air on the Commission's report.

Q. Go ahead with your explanation, if you will, now, please, Mr. Gordon.

A. During this same period, from 1950 to 1953, Riss & Company showed a drop in their business of 10.2 per cent. They were losing LTL revenue in about the same proportions that the railroads were losing it. It is interesting to note, also -- this figure is not on the exhibit -- but the six competitors during this period increased their LTL revenues 38.8 per cent. They did slightly better than the industry as a whole.

Q. In other words, this exhibit shows, then, I take it from what you have just said, that as far as LTL business is concerned Riss & Company is going contrary to the trend of the industry and even more contrary to the trend of the six companies with which Mr. Riss sought to compare

15,307 himself? A. That is correct.

Q. Very well. Will you proceed.

A. In the lower half of the exhibit I showed the percentage distribution among these various classes of carriers. You will note that motor carriers increased their participation from 61.3 per cent to 65.5; while the railroads decreased theirs from 21.3 per cent down to 15.8 per cent. The Class A forwarders increased theirs slightly.

Q. Mr. Gordon, did you consider operating ratios in connection with your study?

A. Well, I had another comment there that I hadn't quite made.

Q. I am very sorry. You mean with respect to Exhibit 5072?

A. Yes. And that is with respect to Riss & Company's policy about LTL. It might have seemed reasonable or desirable for Riss & Company to discourage LTL traffic during this period, because they were handling a lot of the explosives and ammunition traffic, and it was turning out to be profitable traffic for them and they were making money. And it might have seemed desirable to discourage the LTL. But in my judgment it was a wrong management decision to make, because they were depending upon a wartime commodity, and they certainly must have known that when the war would end, they would not have that traffic, and they would
15,308 have to go out and try to get traffic to take its place.

You will recall the shippers' witnesses testified that by discouraging the LTL traffic, they also lost truckload business, because the shippers found they couldn't ship LTL traffic, either because the terminals were closed or because of the imposition of this high minimum on LTL shipments, and they took their business away from Riss. And when they took their business, sometimes it included truckload business, too.

Q. Mr. Gordon, is it your experience in the transportatipn field that shippers are disposed to separate their shipments and give LTL to one trucker and truckload to another trucker, or do they as a rule concentrate and put all of their shipments with a single trucking company?

A. Well, I don't think you can generalize too much about that, because it depends a lot on the kind of a shipper and the amount of traffic that he has. He will ordinarily, if he is giving his business to certain truck lines, he will probably try to divide it up to some extent. But if he is a smaller shipper, or if it is inconvenient for him to get another shipper in to handle truckload business, --

Q. You mean to get another trucker in to handle it?

A. -- another trucker in to handle the truckload business, then he is apt to become antagonized and turn the whole business over to
15,309 another trucker.

Q. Did you consider operating ratios in making your analysis?

A. I gave them some consideration, chiefly because they are customarily used in making any comparison of the result of operation of trucking companies.

Q. Does Exhibit 5073 reflect the operating ratios of the various companies -- A. Yes, it does.

Q. -- with which Riss sought to compare itself? A. Yes.

Q. I think you have already answered the question. Well now tell us about this exhibit. You say you included it because it was customary. What does it show?

A. It shows that during this period Riss & Company and Cooper Jarrett made the biggest improvement in operating ratios, and the other five competitors had an increase in their operating ratios.

Q. This exhibit would seem to indicate, Mr. Gordon, that Riss & Company was a first-class operator. Its operating ratio was lower than anybody except Cooper Jarrett, in the year 1953. Am I correct in the conclusion that it was a first-class operator, as shown by this exhibit?

A. Well, this exhibit would indicate that. But the difficulty is that where trucking companies have subsidiaries or affiliates on the side,
15,310 as Mr. Riss termed it, the operating ratios can be very misleading. Unless you have the figures of these non-reporting affiliates or subsidiaries combined with the operating company, you don't get a true picture of their operations.

Q. Maybe we had better explain a little more fully what you mean by "operating ratio."

A. The operating ratio is the ratio of the operating expenses to the operating revenues. It is the percentage that those expenses are to revenues. In other words, if you take in a dollar in revenue and it costs you 90 cents in operating expenses, you say your operating ratio is 90 cents.

Q. Ninety per cent?

A. And you have a net operating revenue of 10 cents out of a dollar.

Q. So that relating your illustration to TEA's Exhibit 5073, in the year 1953, out of every dollar of revenue that Riss & Company took in, you had an expense of 90.3 cents; is that right? A. Yes.

Q. Now you say this exhibit seems to show comparability, whereas in fact the comparability may not exist. Would you compare Riss & Company, for example, in the year 1953 with Denver Chicago Trucking Company, which had an operating ratio of 90.9.

15,311 A. Well, Denver Chicago Trucking Company, with practically the same operating ratio, in my opinion is not comparable with Riss & Company, because Denver Chicago Trucking Company had no affiliate or subsidiary on the side. It is a proper operating ratio for that company. In the case of Riss & Company, TME's figures are not included, and should be in order to make the figures comparable.

Q. In 1953 was TM&E leasing the General Motors and Fruehauf trailers? A. No, sir.

Q. What was it leasing to --

A. Well, my recollection is that it was leasing some trailers, and it was also leasing terminals, to Riss & Company.

Q. Turn, if you will, please, Mr. Gordon, to TEA's Exhibit 5074. This exhibit is entitled, "Average Loading Per Vehicle." Explain, if you will, please, what "average loading per vehicle" means.

A. It is ton-miles that we have talked about before, divided by vehicle-miles. They have miles in the numerator and miles in the denominator. So you cancel them out and get tons per vehicle. It is the average loading of vehicles, and it takes in the empty vehicle-miles, in the denominator, as well as the loaded vehicle-miles.

Q. Just to be sure we understand, looking at Cooper Jarrett,

15,312 for example, does the figure 15.86 mean that the average load on the Cooper Jarrett trucks was almost 16 tons?

A. That is the average load, including any light vehicle-miles. That is correct.

Q. And that same year of 1949 the average load of Riss & Company was 10.65 tons? In other words, there was a difference of roughly 10,000 pounds per vehicle? A. Yes, that is right.

Q. Now would you go forward and explain the exhibit, please.

A. Throughout this period Riss & Company's average loading was below the six competitors as a group. You can see that by just looking at the last two lines of the exhibit, running your eye across.

In 1949 Riss was fifth in the loadings. But by 1953 it was seventh or last. In other words, in 1953 Riss had the poorest loading per vehicle of any of the companies shown.

For the trend throughout the period, five of the six competitors increased during this period; and the group increased their loading over 10 per cent -- 10.7. But while this was going on, Riss & Company's loading was falling down. It was down to 11.5 per cent.

Q. I notice, Mr. Gordon, by referring to Exhibit 5074, as compared with Exhibit 5073, that two companies whose average loading decreased 15,313 during the period, namely, Cooper Jarrett and Riss & Company, as shown on Exhibit 5074, apparently had the best operating ratios. How do you explain that?

A. Well, that is a strange coincidence. These figures here, in my opinion, don't have anything to do with that. You have to look elsewhere for the explanation.

Q. What is the explanation?

A. Well, there are several. In the first place, Cooper Jarrett's loading, although it did decrease 12.1 per cent, was still the high loading of 13.94 tons. It was still the second highest in loadings in the year 1953 of the competitors.

One other explanation is that over this period Cooper Jarrett was increasing its less-truckload traffic. Now less-truckload traffic does not load as heavily as truckload traffic. Cooper Jarrett increased its truckload

business from 34 per cent in 1949 up to 38 per cent in 1953. And --

Q. In your opinion, Mr. Gordon -- excuse me.

A. And while this was going on, the other five competitors, their percentage of LTL revenue of total was going down.

Q. Mr. Gordon, in your opinion, from the standpoint of average loading per vehicle, is it appropriate to attempt to compare Riss & Company in 1953 with its so-called six competitors?

15,314 A. No. Riss' LTL tonnage was dropping through this period. Its average load decreased; and it decreased because of the imbalance of traffic. It is the lowest of any of the carriers shown on the exhibit, and in my opinion it is not comparable to the six competitors, with the possible exception of General Expressways.

Q. Is there any relationship --

A. And may I also add that there is a striking dissimilarity between Riss & Company and General Expressways, because General Expressways was in financial trouble and was in the bankruptcy court during this period -- during the entire period.

Q. Does average loading measure the efficiency of operation in any degree?

A. I think it has a bearing. It has a bearing certainly with respect to the imbalance of traffic.

Q. Does traffic density have any bearing upon efficiency of operation?

A. I believe it does. When a company goes out and acquires operating rights or routes, it certainly ought to try to get enough traffic to justify that purchase. And if they don't, their density is going to be low.

Q. Does the average utilization of equipment have any bearing upon the efficiency of operation?

A. Yes, I believe it does.

Q. Did you give any consideration in your analysis to
13,515 the average utilization of the tractors employed by Riss & Company?

A. Yes, I did.

Q. Did you prepare an exhibit covering that subject?

A. Yes, sir.

Q. Is that Exhibit 5075?

A. Yes.

* * *

BY MR. GATES:

15,317 Do you consider equipment utilization important in any comparison of trucking companies?

A. Yes.

Q. Will you please explain what this exhibit purports to show?

A. It shows the number of vehicle miles, and by a vehicle, I mean a tractor and a trailer, or in the earlier period, sometimes just a truck.

Q. Now, those are limited to power units meaning the
15,318 tractor part?

A. Well, it is vehicle miles, divided by the power units, so that it shows the mileage that you are getting from your power unit, whether it be a truck or a tractor; and we take the annual, the total vehicle miles for the year, and divide it by the average number of power units that the company has, and then divide that by the number of calendar days, so that we get it on the daily basis.

Now, obviously, it is important to get as much utilization out of a piece of equipment as possible, because there are certain costs that remain fixed, and you have to pay those costs whether you get ten miles a day or two hundred miles a day, such things as the interest on the equipment; and the depreciation goes on anyway; and the insurance. Those

are fixed costs, and obviously if you are going to operate efficiently you want to get as much use out of them as possible.

Maybe I can illustrate that by an example. Let us take a company that has to operate 100,000 vehicle miles a day. Now, if it is getting a utilization of only 100 miles a day, it will need to own or rent 1,000 tractors in order to accomplish the day's business. But if it can increase its utilization so that it is getting two hundred miles per power unit per day, then it can cut down its fleet from one thousand tractors to five hundred tractors. It is just cut in two; its depreciation, interest and in-
15,319 surance, and to some extent, such things as vehicle license costs, and other items of that nature. It is an important index of efficiency.

Now, the exhibit shows that in 1949 Riss ranked fourth -- excuse me, Riss ranked sixth out of seven companies. You see the first column there, Riss is only 181 miles a day, and everybody else gets more than that, except General Expressways, which got 121.

In 1953, Riss was still in sixth place, with 160 miles. He was still ahead of General Expressways with 137. But in 1949, there was only a difference of 21 miles between Riss's average and the group. The group got 202 and Riss got 181.

But by 1953, that difference had spread, and the group was getting 54 miles a day more than Riss was getting. The trend also shows the picture, and by the trend I mean, the comparison of 1949 with 1953. The percentage increase over that period in utilization for the group was 5.9. Riss and Company, however, had deteriorated in their utilization; went down 11.6 percent.

Now, the only, as I mentioned, the only company that was below Riss in this period was General Expressways.

Now, there are perhaps, there are at least two explanations for that, or maybe three. One was that General Expressways was in bankruptcy and probably wan't in a position to go out and buy new
15,320 equipment because they owed a lot of money already.

In the second place, you may remember that General Expressways was a relatively short haul carrier.

Now, a short haul carrier doesn't have quite as good an opportunity to get good equipment utilization because he runs a shorter distance and he has to stop oftener. If his average haul is only two hundred something miles, and he has to stop at that terminal, and the load taken off, and the tractor put into another service. But every time you stop at a terminal you lose time.

The third reason was that General Expressways at this period, and this relates back also to the financial difficulty they were in, had a substantial amount of old equipment, so that its equipment was becoming obsolete, and was also needing repairs more often and in a greater degree.

So whenever the tractors are out of service because they have to be repaired, they are not making miles. In addition to that, when they are old, they are more apt to break down; and when they are broken down, they are not making miles.

Q. Mr. Gordon, judging by relative position or by improvement, was Riss's situation in 1953 better or worse than it was in 1949?

A. It was worse. It had declined nearly 12 percent; and the 15,321 group, on the other hand, had improved its position by almost six percent.

Q. As a general rule, does the decrease in utilization increase or decrease cost of operation?

A. Yes. I think it is very clear that when the utilization declines the costs go up, and vice versa.

Now, Riss's costs may not have increased too much in this period because throughout this period they were operating primarily by means of owner-operators, and the leases with the owner-operators, according to the record, were usually on a mileage or trip basis, so that in that respect, Riss was not paying for all of the idle time. The owner-operator

was standing that expense. Now, whether he reflected that, to what extent he reflected that in his rents, I don't know.

Q. Mr. Gordon, in your opinion, is it appropriate to compare Riss and Company with the other six alleged competitors from the standpoint of vehicle miles per power unit per day?

A. In my opinion, it is not appropriate, The utilization of the other companies is substantially greater than Riss's, with the sole exception of General Expressways, and I have just explained why General Expressways was not comparable with Riss and Company.

Q. You are speaking of the year 1953, or for the period from 1949 to 1953?

A. Well, I was actually, I was speaking of the year 1953, but the
15,322 general comment applies to all of the years.

Q. Does the amount of investment which a trucking company has for route miles offer any basis of comparison in your judgment?

A. Yes, I think it does.

Q. Did you prepare an exhibit which would demonstrate the amount of investment that is necessary in property per route mile of Riss and Company and its competitors?

A. I did.

Q. Is that shown in Exhibit 5076?

A. Yes, sir.

Q. Will you please turn to it and explain to us just what you have done here?

A. Well, from the Form A's, I took the investment in all carrier property, and by that I mean, their investment in terminals, other structures, garages, every kind of fixed property, plus their investment in rolling stock, and by rolling stock, I mean their tractors and trailers and work equipment, service equipment. From that was deducted depreciation that had been accrued. That gave the net depreciated carrier property for each of these companies for each of the years.

Those figures, by the way, are as of year end in each case.

Q. Mr. Gordon, let me interrupt you. Would you please tell us what you mean by depreciation that had accrued, by giving us a simple
15,323 illustration?

A. Yes. We will assume that a unit cost $5,000.

Q. You mean a tractor?

A. Yes.

Q. All right.

A. And assume that it was to be depreciated on a five-year basis, straight-line depreciation, with a ten percent residual value. That would mean that taking the $500 or the 10 percent from the original cost of $5,000 would leave $4500 to be depreciated over five years.

So at the end of the first year, you would have depreciated one-fifth of that or $900; and whereas the unit stood at $5,000 on the books, you would deduct the $900 and get $4,100 as the net depreciated value after the end of the first year. In other words, if you bought the unit the first of the year, its depreciated value at the end of the year, instead of being $5,000 would be $4,100.

Q. That is what the figures in the top part of Exhibit 5076 represent; is that correct?

A. That is right.

Q. Go ahead, please.

A. Looking at the figures on that top part for a moment, you will notice that Riss and Company is lower than any of the other companies shown there, except for Yellow Transit Freight Line. Both Yellow Transit and Riss and Company rented their equipment instead of
15,324 owning it throughout this period.

Q. Am I correct, I want to be sure I read this right, that net investment of Riss and Company in 1953 in everything they had in the way of carrier-operating property was only $829,000?

A. That is right.

Now, Riss and Company did own a very small amount of equipment, and Yellow Transit Lines owned none of its tractor-trailer equipment.

Looking at the middle portion of the exhibit, you will find, authorized route miles regular. That is a familiar figure to us because we have already seen that on Exhibit 5065. Those figures are repeated here so that you can see how we made the computations in the lower one-third of the exhibit, which is headed, Investment per Route Mile.

Now, the investment per route mile varies substantially, but you will again notice that Riss and Company is at the bottom of the heap, and that is primarily because they own, such as they owned during this period, such a small amount of tractors and trailers.

The only company that is anywhere near Riss is the Yellow Transit Freight Lines.

Now, in 1949, Riss had one-sixth of the investment per mile that Cooper-Jarrett did. Riss had an investment of only $7. Now, these figures 15,325 at the bottom here, they are not in thousand, they are in actual dollars.

Riss's investment was $7 per mile, and Cooper-Jarrett's was $43, or six times.

And Denver-Chicago was about 40, 41 or 42 times Riss's. Even the group was about twenty times Riss.

Now, turning or going over to the last column, 1953, Riss and Company had increased somewhat, primarily because of increase in structures, rather than equipment, but they were still the low carrier, having only $40 per mile and being much lower than most of the other carriers.

Denver-Chicago, for example, had thirteen times the investment that Riss had per mile, and the group as a whole had more than five times the investment.

Q. In your opinion, is Riss and Company at all comparable to the other companies in terms of investment in net carrier property per route mile?

A. No. The only company that it is at all comparable with is Yellow Transit Freight Lines, which was in the same general position of leasing its equipment.

Q. In your opinion, that is the reason for the disparity between Riss and Company and Yellow Transit on the one hand and the other carriers on the other?

A. Well, the principal reason for the disparity is that, in the first place, the other companies generally owned much more equip-
15,326 ment than did Yellow Transit and Riss and Company; and when a company does not own equipment, simply rents it, obviously no investment figures appear on their books.

Q. Bearing in mine the number of route miles that were operated by Riss and Company and the volume of business as shown by the preceding exhibit, would Riss and Company have had to have had as much equipment as these other companies in order to operate successfully?

A. Yes. You will recall that Riss and Company handled more traffic than these other lines during this period. That shows in one of the early exhibits.

Q. What would you have to have in the way of information in order to make these figures comparable in your judgment?

A. Well, you would really have to have the investment in the rented equipment in there, and in some cases, rented terminals. Some of these companies rented their terminals either from the outside or from non-reporting subsidiaries or affiliates.

Q. Do you believe it is possible to make a valid comparison of net investment in carrier-operating property without having all these other figures available?

A. I do not, and I believe that this exhibit just presents a contrast, which shows a difference in the investment per mile, and it

also shows a difference in the operating policies of these companies.

15,327 Q. Are direct line haul expenses an indication upon which one can make a comparison?

A. Yes, sir, they certainly are.

Q. What do you mean by direct line haul expenses?

A. Well, may I explain first the general categories that the Interstate Commerce Commission calls for in Form A.

Q. Yes. What are you referring to there in front of you now, Mr. Gordon?

A. I am referring to a Form A report that happens to be for Riss and Company for the year 1957, and it starts out on Schedule 4000, on page 44, and I will just list the main categories that the Interstate Commerce Commission prescribes for the separation and allocation of expenses.

The first one is equipment maintenance. The second one is transportation. The third one is terminal, and the fourth traffic, and the fifth, which appears on the next page of the Form A report, is insurance and safety; and the sixth is administrative and general.

Then in Schedule 5000 there appears the category, depreciation expense, which is on page 46; and below that, on the same page, Schedule 5100, depreciation adjustment; and below that, Schedule 5150, amortization chargeable to operations.

And then in Schedule 5200, and 5200-A, that is a capital

15,328 A; and those appear on pages 47 and 48, and we find the category, operating taxes and licenses.

Now, those are all of the categories that are used by the Commission, I should say, general categories. Under each of those general categories are more detailed expenses, and it is to those detailed accounts that you go when you desire to make a separation between line haul expenses, terminal expenses, indirect expenses, and overhead expenses.

Q. What are line haul expenses? That is what I am trying to get at.

A. We are coming to that.

Q. Oh, all right.

Maybe it will facilitate matters, did you prepare an exhibit with respect to direct line haul expenses, and is that Exhibit No. 5077?

A. Yes, sir.

Q. That is for the year 1953?

A. That is right.

Q. Now, using that exhibit, if you will, please tell us what you mean by direct line haul truck expenses?

A. Well, these expenses are expenses which are directly connected with the operation of the tractors and trailers. They include the various items which are shown in the left-hand column. For instance, repairs and servicing, tires and tubes, are two of the accounts shown under the general category equipment maintenance that I spoke about a

15,329 few minutes ago.

Now in the Form A report, those two items, repairs and servicing, and tires and tubes, are separated into two parts, one part relating to line haul equipment, and the other relating to pick up and delivery equipment; and the figures that I have on this Exhibit 5077 all relate to the line haul equipment only, because what I am trying to do here is to compare the line haul costs of Riss and Company with the line haul costs of those other companies.

Now, the same thing is true for drivers and helpers, fuel, oil, and purchase transportation. Those items all come under the general heading of transportation in the Form A report, and these particular amounts that I have set down here all relate to line haul equipment and exclude pickup and delivery equipment.

You will also note that Note B after Purchase Transportation shows that expenses of Purchase Transportation in connection with rail or water transportation are excluded, and the reason for that is that where

piggy-back operations are involved over the railroads, the amounts of purchase transportation paid by the company, Riss and Company, for example, in later years, those amounts are excluded; and also when you get down to the bottom part of the exhibit, the corresponding ton miles on the railroad are excluded. So that we are narrowing this down to the cost of line haul operations on the highway.

15,330 Now, in addition to the items I have mentioned in the left-hand column, we have also included gasoline, other fuel, and oil; taxes; vehicle licenses and other fees; and equipment and depreciation. All of these being related only to line haul equipment, and not on an estimated basis, but based on the figures reported to the Interstate Commerce Commission on Form A.

Now, there are obviously a lot of the expenses of the companies that are not included in here. There are no terminal expenses included; none of the pickup and delivery expenses; none of the insurance; none of certain indirect expenses in maintenance and transportation, like supervision and office expenses are not included; and overhead expenses generally are not included; administrative and general expenses are not included.

So it narrows the cost down to the operation of the line haul vehicles over the road.

Q. I take it then you also excluded the traffic and sales and advertising expenses?

A. Yes, sir.

Q. All right, go ahead, please.

A. You will note that those figures are then totaled in what is called Total Direct Expenses, and then we make one adjustment there, by adding to those direct expenses a six percent return on the investment

15,331 in revenue equipment.

Q. Why did you do that?

A. Well, the reason for that was that some of these companies rent equipment, either from subsidiaries or from affiliates or from outside

sources, and included in the rent that those companies paid would be an amount equivalent to six percent on the investment. In other words, that corresponds to the interest that somebody would be paying on equipment debts.

At any rate, it seemed fair to me to make an adjustment here so that companies that owned their own equipment would have this cost included to make them more comparable to those companies that do not own their own equipment.

Now, the bottom part, the bottom half of the exhibit, shows expenses per thousand highway revenue ton miles.

Now, we have had some experience with ton miles. You remember that the revenue per ton mile ran around anywhere from three to five cents, usually in that range.

Here, in order to make the figures a little more significant, I have used thousand revenue ton miles. That means that you point off three places. For instance, if you look at the Cooper-Jarrett, Incorporated, the last figure in the first column, you will find $17.13 per thousand revenue ton miles. That means one and seven-tenths cents. So that out of the revenue per ton mile, between three and four cents
15,332 Cooper-Jarrett got, he spent 1.7 cents for these line haul costs.

Now, if you will look at that bottom line of figures, you will see that there is a substantial variation in the unit costs, and you will see that the only company that has a higher cost than Riss and Company is General Expressways. They keep cropping up all the time from the standpoint of inefficiency, because they were in bankruptcy, and so forth; and then with low loading, low average loading per vehicle; and they come up here again in the costs, which is not entirely unexpected.

But Riss and Company is much higher than any of the others, and is substantially higher than the group as a whole.

Q. The group as a whole is $20.33 per thousand highway revenue ton miles and Riss is $26.73; is that correct?

A. That is right, and Riss is 31 percent higher than that average.

Now, the range for the other companies excluding General Expressways, is from $16.39 for Eastern Express up to $23.07 for Transamerican.

Now, the curious thing about this is that you will recall that in 1953 Riss had its best profits, best net revenue operation, best net income before income taxes, of any year in its history; and still it was a high cost operator.

You will also note the extreme variations in the unit costs of individual items. Take Denver-Chicago Trucking Company, in repairs and servicing, is $4.20. In fact, there are three companies right together there that have figures over $4; General Expressways, 4.26; Yellow Transit, 4.56; and Denver-Chicago, 4.20.

15,330 On the other hand, you will find Eastern Expressways with a very low figure.

You will find the same kind of a picture with respect to some of the other items. I think fuel is a good example. You will notice the fuel costs per thousand revenue ton miles are only 21 cents for Riss and Company and $3.05 for General Expressways, and $2.86 for Yellow Transit, and $2.67 for Denver-Chicago.

Now, you say, how can that be? Well, it sounds foolish on the face of it, and it is foolish, but it all comes about because of the accounting for these items.

When these companies made leases with owner-operators, for example, they rented the trucks complete with driver, complete with fuel, repairs, and everything else. The owner did all the repairs, and he put in the gasoline or diesel oil, and took care of the license plates and everything else; and then he rented the whole ball of wax to the company. Well, the company didn't have to pay any fuel costs, but it was getting ton miles

and it was getting its traffic hauled, so it shows a low cost, and that is why you cannot use these individual items here, but when you get down to the total --

15,334 Q. When you say individual items, do you refer to such things as repairs and servicing, tires and tubes, that breakdown in the left column?

A. That is right.

When you get down to the total the figures are in a comparable basis because you will notice that they include the item of purchase transportation.

Now, these expenses that I was telling you about that the owner-operator has, that he stands himself, he gets those back in the rental, and the rental in turn goes into what is called Purchase Transportation. In other words, Riss and Company was a good example of it. They hired a lot of their tractors from these owner-operators, and they paid the owner-operators rental covering all these various items, and that rental went into the purchase transportation.

If you will look opposite Purchase Transportation for Riss and Company you will find in the last column there $18.80, and you will see that it is much greater than any other company; but a further interesting thing about it is that it is also higher than the total cost of two of the companies. The first two, you will notice, Cooper-Jarrett, the total cost, including return on its investment, $17.13; Eastern Express, a similar figure, $16.39; yet Riss and Company was paying $18.80 just for the rental of this owner-operator deal they had; and in addition to that, they were paying a number of other costs for drivers and helpers, and the

15,335 various items listed at the left-hand side of the sheet.

Q. Mr. Gordon, did you prepare similar exhibits with respect to direct line haul truck expenses for the years 1949, 1950, 1951, and 1952?

A. I did.

Q. And are the figures reflected in exhibits TEA 5078, 5079, 5080, and 5081?

A. They are.

Q. Except for the differences in the figures which result from the operation for particular years, is there anything significant about those exhibits, any differentiation that you want to draw between the year 1953 and any one of those years?

A. They are all prepared on the same basis, with one slight exception, and that is the year 1949.

Q. That is 5078?

A. Yes. In that year, 1949, the Interstate Commerce Commission did not require complete separation of equipment rentals between line haul and pickup and delivery equipment; and we have estimated those figures based on an investigation of the years 1950 and 1951, so as to get a reasonable percentage of those rentals that apply to line haul service.

Q. Did you prepare a summary exhibit showing direct line haul expenses per thousand revenue ton miles for the years 1949 and 1953, 15,336 inclusive?

A. Yes, I did.

Q. Are the results shown on Exhibkt 5082?

A. Yes, sir.

Q. Would you turn, please, to that exhibit, and tell us what conclusions you draw from this exhibit?

A. Well, in the first place, looking at the sub-total for the six competitors, that is, in the next to the last column --

Q. You mean, column second from the right

A. Yes. You will notice that there is a general upward trend, not consistently upward, but generally so, throughout the five-year period. The increase in unit costs being 11.9 percent, comparing 1953 with 1949.

In the case of Riss and Company, its unit costs went up 22.8 percent, or about twice as fast; but in addition to that, and more important, Riss's unit costs are much higher than the six competitors throughout the entire exhibit. In fact, they range from 20 to 35 percent higher than the group of six competitors, reflecting, I believe, the poor performance shown by Riss in previous exhibits, such as the average load per vehicle, equipment utilization, operating revenues per vehicle mile, and so forth.

Q. In your opinion, Mr. Gordon, is it possible to make a valid comparison between Riss and Company and the six competitors
15,337 with respect to direct line haul truck expenses?

A. No, I don't think it is. There is just one company that shows expenses in the same general range as Riss and Company, and that is General Expressways.

Q. Do you believe that Riss and Company was in any way comparable to the six competitive companies in terms of direct line haul expenses?

A. Only with respect to General Expressways. As far as the other companies are concerned, the exhibit instead of providing a comparison, provides a contrast.

Q. You have discussed in your testimony, Mr. Gordon, fourteen or fifteen areas in which you have endeavored to make a comparison.

Have you prepared what I will choose to call for the moment a box score, or a summary, of the results of your comparison?

A. Yes, sir, I have.

Q. And is that Exhibit 5083?

A. It is.

Q. Would you please explain this exhibit to the Court and the jury?

A. Well, this is a summary of the exhibits and testimony up to this point. I have omitted the operating ratios because the figures are not properly comparable in themselves, as I have testified a little while ago; and I have listed down the left-hand side the various items that I have used in this comparison or contrast. And across the top I have listed the six competitors.

15,338 Then opposite each item, I have marked, Yes, if I considered the competitor comparable with respect to that particular item; and I have marked, No, if I considered it not properly comparable; and in a few instances I have used a question mark.

Now, in those particular instances, my own opinion is that the competitor is not comparable, but I realize that in some of these cases there might be grounds for difference of opinion, and someone else might feel that there was some comparability, so in those items I have put in a question mark.

I don't think it is necessary to go through the body of the exhibit, but I would like to refer to the recapitulation, if I may.

Q. That is down at the bottom?

A. Yes.

Q. Please do.

A. You will notice that the Yes's and the question marks and the No's are recapped at the bottom.

In the first place, Cooper-Jarret, there are no Yes's; no question marks; and there are fourteen No's. In other words, every item gets a No with respect to Cooper-Jarrett.

15,339 In connection with Eastern Express, there are no Yes's; there is one question mark, on the total traffic in ton miles; and thirteen No's.

Now, in the next two, General Expressways and Yellow Transit Freight Lines, each of them got five Yes's and nine No's, so they are the least incomparable of any of those shown on the exhibit.

Denver-Chicago Trucking Company had one Yes; one question mark; and twelve No's.

Transamerican Freight Lines, two Yes's, two question marks, and ten No's.

Now, you will notice that no one company has more Yes's than No's. You will notice also that General Expressways and Yellow Transit have the greatest number of Yes's, five out of fourteen.

Also, you will note that 1953 is not a proper base year for Riss and Company because of the inflation of the business of the Korean War, and keep that in mind in connection with looking at General Expressways and Yellow Transit Freight Line, who had more Yes's than any other company, but who were in the bankruptcy courts during that proceeding -- during this period.

Now, in 1953, Riss had its best year, but it was inefficient, as we say from the direct line haul costs and several other exhibits.

15,340 General Expressways was also inefficient you remember.

Riss, although it was inefficient, made money, and it made money because of the wartime commodity that it was hauling, explosives and ammunition.

As soon as they lost that business in '53, they commenced to go down.

Q. Mr. Gordon --

A. Now, the other four companies on this exhibit, Cooper-Jarrett, Eastern Express, Denver-Chicago, and Transamerican, are about as dissimilar to Riss and Company as any company that you can pick out, in my estimation. They just aren's the same kind of animals as Riss and Company.

My conclusion is that these six companies are not comparable to Riss in 1953; and therefore, no matter what happens thereafter, Mr. Riss is not justified in drawing any conclusions regarding the earnings, based on the experience of these six companies.

* * *

BY MR. GATES:

15, 341 Mr. Riss has testified in this proceeding that based upon his comparison with these six competitors, his earnings in 1957 should have been at least as great as they were in 1953? Do you agree with that conclusion of Mr. Riss's?

A. No, sir.

Q. And what is the reason or reasons that you do not agree?

A. Well, the principal reason is that there is no basis for comparing the performance of these six companies with Riss and Company because they were so dissimilar in all of the various factors that I have testified about.

* * *

15, 342 Q Just before the recess, Mr. Gordon, I asked you please to turn to TEA's Exhibit No. 5084 and to explain that exhibit to us.

Would you now do so?

A. Yes.

I have assumed in this Exhibit 5084 that Riss & Company had kept pace with the competitive group with respect to line-haul truck expenses per thousand ton miles, in each of the years from 1949 to 1953.

15, 343 In making that computation I start with the first column which shows for each year Riss & Company's direct-line-haul truck expenses, in thousands of dollars.

In the second column, Riss &Company's intercity highway ton miles.

In the third column I have placed the direct-line-haul truck expenses per 1, 000 ton miles for the six competitors as a group.

Q. Those figures were taken from Exhibits 5077 to 5081, inclusive?

A. That's correct.

Then I multiply the figures in this third column of figures, the one that starts with $18. 17 for the year 1949, by the Riss & Company

intercity highway ton miles, which shows in the second column of figures, the figure for the year 1949 being 351,681,000 ton miles.

That multiplication gives me the answer in the next column of figures, the one headed "Riss & Company constructive direct line haul truck expenses," and in the year 1949 the answer is $6,390,000.00.

Now, you will note that that figure is substantially lower than the figure in the first column of $7,656,000.00. That first column represents Riss & Company's actual line-haul expenses.

15,344 So, in the last column I have shown the additional earnings of Riss & Company derived from the savings and direct-line haul truck expenses.

In other words, you deduct the $6,390,000 in the fourth column from the $6,656,000 in the first column, which gives Riss & Company $1,266,000.00 additional earnings, if they had operated their line-haul services at the same costs as the competitive group.

Q. Now, just a moment please, Mr. Gordon:

The net operating revenue as shown by Plaintiff's Exhibit 243-A for the year 1949 was $451,000,00. What would have been the effect upon the net operating revenue for that year?

A. That would have increased the net revenue from operations to $1,700,000.00, roughly.

Q. Would you continue, please?

A. The similar computations were made for each of the years shown on the exhibit. For example, in 1950 the additional earnings of Riss & Company would have been $1,538,000.00. If that is added to the net operating revenue shown on Exhibit 243-A, the total becomes $2,850,000.00, roughly.

Q. Very well.

A. In 1951 the additional earnings computed on the same basis are $3,140,000.00, and if you add that to the net operating revenues of 1951,

15,345 as shown on Exhibit 243-A, you obtain a total of $4,200,000.00, approximately.

The similar computations for the year 1952 show additional net earnings of Riss & Company at $3,642,000.00, and if you add that to the actual

shown -- the actual net operating revenue shown on Exhibit 243-A, you get a little over $4,000,000.00 -- almost $4,100,000.00 -- wait -- wait a minute. I have lost the -- that's wrong.

Q. It would be $5,000,000.00.

A. I got the wrong place. That's a little over $5,000,000.00. About $5,100,000.00.

And in 1953 similar computations show additional earnings of $3,859,000.00.

Adding that to the net operating revenue shown on Exhibit 243-A, you get a total of approximately $6,700,000.00.

Q. What did you conclude from Exhibit 5084, Mr. Gordon?

A. Well, it establishes either that Riss was not comparable to these other companies or that Riss was operated inefficiently, or more probably a combination of those two; that it was both incomparable and inefficient.

Q. Now, from which of these exhibits which you have testified about this morning do you conclude that there is evidence of inefficiency?

15,346 A. Well, I would like to say, first, that it may seem strange that we say Riss was inefficient when in 1953 they had a profit, but, nevertheless, the figures show that it was a high-cost operator, and its losses in subsequent years should have been anticipated.

Riss' profits would have been more than doubled in 1953 if the costs had been in line.

Now, as to the reason for inefficiency, those are shown on the exhibits and by testimony:

Density, on Exhibit 5066, revenue per vehicle mile, 5070.

Neglect of LTL business, 5071.

Average load per vehicle, 5074.

Equipment utilization, 5075.

Direct-line-haul costs, 5082.

In my opinion those exhibits and the testimony relating to them show some of the reasons why Riss' performance shows up badly.

Q. Mr. Gordon, in view of the situation in which Riss & Company found itself at the end of 1953, do you have any comments with respect to its costs, its acquisition of a new fleet and its changes in method of operation in 1954?

A. Well, when the war ended in 1953 Riss was faced with the loss of a considerable amount of its traffic, the explosives traffic. It should
15,347 have realized at that time the necessity of control over its costs and the necessity for regaining the profitable LTL traffic, this truckload traffic that it had lost during this period, as I previously pointed out, by discouraging such traffic in several different ways.

* * *

Q. Mr. Gordon, you testified on last Thursday that the third step which you had to pursue in connection with this study that you made was to determine whether 1957 was a proper terminal year; that is, if you were going to come to a conclusion as to whether Mr. Riss was justified in drawing the inference that his company should have done at least as well in 1957 as it did in 1953. Did you make an investigation for that purpose?

A. Yes, I did.

Q. Briefly tell us what that investigation consisted of.

A. Well, that investigation consisted primarily of covering the same aspects of traffic revenue and operating statistics, operating performance and cost, as the previous set of exhibits for the year 1949 through 1953.

15,348 In addition to that, there were some additional matters and some additional exhibits that they prepared to treat special circumstances.

Q. Now, you mentioned certain special matters or special circumstances. Did you find any that affected Riss particularly?

A. Yes. One of those was the shift in Riss' operations from owner-operated to leased from affiliates with respect to the equipment, the over-the-road equipment.

Q. Now, what different types of operation are there, Mr. Gordon?

A. Well, up until the last two or three years of this period, say in '53 and '54, there were three types of operation:

Operation with owned equipment;

Operation with leased equipment, without drivers; and

Operation of leased equipment with drivers.

The latter is frequently termed owner-operator, and I think has been referred to in that manner throughout the testimony in this case.

Q. Now, in the latter part of the period '53 to '57, that is a fourth type?

A. Yes, that would be piggyback service or rail-water transportation as the Interstate Commerce Commission terms it.

15,349 Q. Are there differences of significance arising out of the type of operation which one might conduct, that is, as between owned or leased or owner-operator, or piggyback?

A. Oh, yes, indeed.

Q. And you say those differences are significant?

A. Yes, sir, they are very significant from an operating standpoint and from an accounting standpoint.

Q. That is, the change from one type of operation to another in your opinion, does that involve any operations problems?

A. Yes, indeed, because in one case you have your owner-operator vehicles where the driver comes complete with the truck, whereas when you lease a truck or tractor, or own it, you usually have to provide your own driver, and if you haven't been doing that, you have to go out and get new drivers.

Q. Now, in connection with your study of this matter, did you prepare an exhibit showing the distribution among these seven companies of the various types of operations, that is, what percentage of the vehicle miles operated were owned or leased or owner-operator, or piggyback?

A. Yes, I did.

15,350 Q. Are the results of that study shown on Exhibit 5085?

A. Yes, they are.

Q. Now, would you please turn to that and tell us what the exhibit shows?

A. Well, each company has a somewhat different history and I think you have to look at each company individually to get a real picture.

Q. Very well, will you do that, please?

A. In the case of Cooper-Jarrett you will notice that in 1953 they operated mostly with leased equipment. That is, leased without a driver.

I might say that "leased" where it shows here on the exhibit, means leased without a driver, and the next caption, "owner-operated," is equivalent to leased with a driver.

Cooper-Jarrett had over two-thirds of its vehicle miles in the lease category, and only 31 per cent in the owned category.

As the years went on you will notice that the owned category percentage went up each year right through 1957 when 72 per cent of Cooper-Jarrett's vehicle miles were made by owned vehicles, and only 13.6 per cent by leased vehicles.

That does not add up to a hundred percent because, during the
15,351 last three years of this period, Cooper-Jarrett had got into the piggyback business in a relatively small way but in 1957 it did amount to 14.4 per cent.

Q. And how did Cooper-Jarrett use piggyback?

A. Well, Cooper-Jarrett used piggyback as the deposition of its officers taken in this case shows, as an overflow or surplus instrument. In other words, when they hit peak loads and their own equipment was not able to take care of it, they frequently used piggyback for that purpose.

Q. Very well, would you continue with your explanation of the exhibit, please?

A. Eastern Express shows quite a different picture. They had, in 1952, 88.4 per cent leased and only 11.6 per cent owned, and the leased percentage kept increasing throughout the period until 1956, when there were no vehicle miles operated by owned equipment, and 94-1/2 per cent was by leased equipment, and 5-1/2 percent by piggyback.

That means, of course, in 1956, and also in 1957, that 100 percent of the highway vehicle miles operated by Eastern Express were in leased vehicles, and in both of those years not a single vehicle mile was operated with owned equipment.

You will notice that Eastern Express also got into the piggyback
15,352 business in a smaller way than did Cooper-Jarrett during these last three years, from 1955 to 1957.

The next company is General Expressways and they show still a different picture:

In 1953 practically 50 per cent of their traffic was in owned equipment, 41 per cent in leased, and 9 per cent in owner operated.

The owned equipment stayed pretty steady through the next two years but there was a shift between leased and owner-operated, the owner-operated becoming greater, until in 1955 it represented almost 40 per cent.

In 1956 and 1957, there were large increases in the owned vehicle miles of General Expressways, up to 71.7 per cent in '56, and 93.8 per cent in '57.

The leased vehicles which had been 19 per cent in '56, practically disappeared in '57, and the owner-operator vehicle miles were of small moment.

General Expressways also was in the piggyback business in a very minor way during the three years 1955 to 1957.

The next company is Yellow Transit Freight Lines, and this picture is the only one that shows uniformity throughout the entire period, or practical uniformity.

15,353 You will notice that their leased vehicle miles are either 99.9 per cent or 100 per cent all the way across. Some of these, practically all of these during this period were leased from their subsidiaries or affiliates.

The next company is the Denver-Chicago Trucking Company and they have somewhat the same pattern as Cooper-Jarrett except that they started off in 1953 with a larger percentage of ownership, but throughout the period most of their traffic is moved in owned equipment and during the past three years a very small amount in leased equipment, and no miles made at all by owner-operated equipment throughout the period.

Also Denver-Chicago Trucking Company did not enter the piggy-back field.

Q. Mr. Gordon, you said "during the past three years." Did you not mean the last three years shown on this Exhibit 5085?

A. I certainly did. If I said "past," it was in error.

Trans-American Freight Lines is peculiar unto itself. You will notice that throughout the period it has operated with owned equipment, tapering off from 25 per cent in 1953 down to just over 15 per cent in 1957. Its leased equipment has increased over this period from 24 per cent in 1953 to 42-1/2 per cent in 1957, and its owner-operated vehicle miles have
15,354 remained an important factor throughout the period. In 1953 they represented 50 per cent and in 1957 almost 42 per cent.

Trans-American has not entered into the piggyback field.

Now, there is also a sub-total in here, and that is not particularly significant because it is a weighted average of these competitors which, you have seen, have varying methods of operation.

The only meaning to the sub-total is that it does show a trend toward greater ownership. In other words, the ownership percentage in 1953 was 34.4 per cent and by 1957 that had gradually got up to 46.9 per cent. Likewise, the leased percentage had declined and the owner-operated percentages stayed about steady.

The piggyback percentage is very small and not worth -- hardly worth mentioning.

Then we come to Riss & Company at the bottom of the sheet, and you will note there that owned equipment vehicle miles are a very small part of Riss & Company's operation, amounting to less than one per cent in each of the last three years shown on the exhibit.

There is quite a shift, however, between leased equipment and owner-operated.

You will notice that leased equipment represented 40. 4 per cent
15, 355 of the equipment of the vehicle miles in 1953. That increased to 56. 3 per cent in 1954 and it was during 1954 that T. M. & E. bought and leased to Riss & Company some 500 tractors and a large number of trailers.

But the full effect of this leasing shows up in the year 1955 which was the first full calendar year when Riss had the use of this equipment, and the percentage at lease went up to 97. 4 per cent.

You will note that that is away higher than any other company shown on this exhibit with the exception of Yellow Transit.

In 1956 the percentage stayed up fairly well. In fact, if we treat only the highway vehicle miles, the percentage would be much higher in 1956. The reason that it is down to 82. 9 is that Riss & Company started piggyback operations in the fall of 1956 and these operations which started in the fall amounted to 13. 4 per cent of Riss & Company's vehicle miles for the entire period 1956.

In 1957 the piggyback operations took over the company, one might say. They amounted to 61. 8 per cent of their total vehicle miles and the leased vehicle miles amounted to only 35. 8 per cent.

After 1954 the owner-operated miles were practically insignificant.
15, 356 Now, this big change that took place in Riss & Company took place between June 1st, 1954 and the balance of the year 1954. Riss put into operation then 500 tractors and about 1, 200 trailers, approximately $14, 000, 000 worth of equipment. In six months Riss & Company put into service about as many tractors as did the six competitors over the entire previous five years.

Now, that is an indication of how radical a step it was. Here is a company that is operating with owner-operated equipment, and all of a sudden it is decided that its affiliate is going to buy all of this equipment, some $14,000,000.00 worth, and my recollection is that Mr. Riss characterized this in his testimony as the largest equipment purchase made by any trucking company in this country. And here is this tremendous purchase being made and the equipment being turned over to Riss & Company to operate in a very short space of time. So that meant that they had to take care of garages, they had to train personnel not only for maintenance and inspection work but for driving these new tractors.

And bear in mind that these new tractors were devised for sleeper cab operation, and when so used required two drivers instead of one.

Prior to this time, under the owner operation, Riss & Company didn't have to worry about the repair cost because that was up to the owner to keep the trucks repaired, and he didn't have to worry about the drivers because they came
15,357 with the tractor.

So that you see that it was a pretty drastic change that took place in a short period of time in the latter half of 1954.

Q. Was the change from the leased operation to the piggyback operation a gradual or was it also a very sudden change?

A. I didn't quite get that.

Q. I asked you, Mr. Gordon, whether the shift from the leased operation, that is, leasing from T. M. &E., which you have just described, to piggyback, was done quickly or more gradually and as a transition?

A. No, it was also a quick, sudden and drastic change taking place in October, 1956.

Q. In your opinion, did that create additional problems for Riss & Company?

A. Yes it did. It created the problem of what to do with all of this over-the-road equipment, when he shifted to handling his stuff by railroad, which left him with a great many tractors that he didn't have need of.

Q. How would that be?

A. Well, he had by that time somewhere, something over 490 tractors, but when he substituted the piggyback service for over-the-highway service, he just didn't need those tractors.

15,358 Q. Well, now, what I am trying to get at is why didn't he need them?

A. Well --

Q. Maybe you had better describe how piggyback operates.

* * *

THE WITNESS: The technical name in railroad service is TOFC -- "trailers on flat cars."

THE COURT: I see.

15,359 THE WITNESS: Suffice to say that when this service is used, the over-the-road service is eliminated, and it is a substitute service for that. So, if you don't have the over-the-road service, you don't need the tractors.

BY MR. GATES:

Q. But you do use the trailers.

A. Oh, yes.

Q. Now, Mr. Gordon, in your opinion, based upon the figures which appear on TEA's Exhibit No. 5085, is Riss & Company during a period from 1953 to '57 comparable to any one of the six so-called competitive companies in terms of the type of operation which Riss & Company conducts as compared to the type of operation conducted by the respective companies?

A. Taking the period as a whole, no. And that has to be said because of these two drastic changes in operation that took place in 1954 and 1957.

Q. Well, was Riss & Company in 1957 comparable to Riss & Company in 1953?

A. No, they were entirely different operations.

In 1953 Riss was operating over the highway primarily with owner-operated trucks, or tractors, and leased tractors, and in 1957 they were operating primarily over the rails and not over the highways.

15,360 Q. Mr. Gordon, there has been substantial testimony in this record with respect to subsidiaries and affiliated companies and you, yourself, have referred to subsidiaries and affiliated companies in connection with your testimony concerning this exhibit.

Did you make any investigation of the Form A's for the purpose of determining what subsidiary and affiliated companies each of the so-called six competitors had in 1953 and 1957?

A. Yes, I did.

Q. Well, would you list for the record the subsidiary and affiliated companies which each of the six had in both 1953 and 1957?

A. The first company, Cooper-Jarrett, had no subsidiaries and no affiliates in either year.

Eastern Express had one subsidiary, Maumee Terminals, Inc., in 1953. They owned that 80 per cent ownership.

In 1957 Eastern Express had -- still had the Maumee Terminals and it had three additional subsidiaries, each of which they owned 100 per cent; Indiana Eastern Terminals, Inc., Missouri Eastern Terminals, Inc., Ohio Eastern Terminals, Inc.

Eastern Express also had a number of affiliates which were owned or controlled by Wilson House, who was either President or Chairman of Eastern
15,361 Express during this period.

In 1953 Eastern Express had six affiliates named as follows:

House Trucking Co., Inc.;

Freight Terminals, Inc.;

Eastern Terminals, Inc.;

Vigo Trailer Rentals, Inc.;

Vigo Tractor Rentals, Inc.;

Penna -- abbreviation for Pennsylvania -- Eastern Terminals, Inc.

In 1957 the affiliates owned and controlled by Mr. House were the same as in 1953 except that House Trucking Company, Inc., had been dissolved or was no longer owned by him, and House Investments, Inc., had come into existence between 1953 and 1957.

Q. How about General Expressways?

A. General Expressways had three wholly-owned subsidiaries in 1953:

Keeshin Motor Express, Inc. (Ind.) -- that means Indiana;

Scott Transportation Company, and

Keeshin Freight Forwarding Company.

All of those had been eliminated by 1957.

Q. Did General Expressways have any affiliates?

A. Yes, they did. They had in 1953 -- they had ten affiliates,

15,362 apparently owned by Keeshin Freight Lines, Inc.

Q. What were the names of those, for the record, please?

A. National Freight Lines, Inc.;

Seaboard Freight Lines, Inc.;

K. F. L., Inc.;

Berod Trux.

Q. I think that is B-E-R-N-D (spelling).

A. Looks like "O". I can look it up if you want me to.

Dickens Motor Freight, Inc.;

Keeshin Cartage Company, Inc.;

Keeshin Air Freight, Inc.;

Keeshin Motor Express, Inc.;

Motorways Terminal, Inc.;

Baumann Motor Express, Inc.

In 1957 all of those had been eliminated and there was a new affiliate, General Expressways, Ltd., of Delaware.

Q. How about the Yellow Transit Freight Lines? Did it have any subsidiaries or affiliates in 1953, and, if so, what were they?

A. It had no affiliates but it had five subsidiaries, all 100 per cent owned:

15,363 Yellow Equipment Co.;

Yellow Terminals, Inc.;

Indiana Yellow Equipment Co.;

Indiana Yellow Terminals, Inc.;

Detroit Yellow Terminal, Inc.

Q. How about 1957?

A. 1957, those five companies had gone out of existence and there were two 100 per cent owned subsidiaries:

The first one was called Yellow Equipment & Terminals, Inc. (Indiana); and the second one was called Illinois Yellow Equipment Company (Illinois).

Q. What was the situation with respect to Denver-Chicago Trucking Company as to subsidiaries and affiliates in 1953 and 1957?

A. In 1953 Denver-Chicago Trucking Company had no affiliates and no subsidiaries.

In 1957 Denver-Chicago had three subsidiaries 100 per cent owned:

R. B. "Dick" Wilson -- the "Dick" being in quotations -- Inc., of Colorado;

R. B. "Dick" Wilson, Inc., of Nebraska; the "Dick" in that name also being in quotes; and the

Eck-Miller Transfer Company.

15,364 Q. How about Trans-American?

A. Trans-American had one subsidiary in 1953: Highway Vehicles, Inc. And that subsidiary was still in existence in 1957.

Q. What was the situation with respect to affiliates?

A. They had Trans-American Properties, Inc. and Cummins Diesel Service & Sales, in 1953.

In 1957 they only show Trans-American Properties, Inc. The other one was out.

Q. Any affiliates?

A. I beg your pardon?

Q. Were those subsidiaries or affiliates you just described?

A. Those were affiliates. That's Trans-American.

The Highway Vehicles, Inc., was a subsidiary.

Q. Does that complete your listing of the subsidiary and affiliated companies?

A. Well, there's one other, in 1957, under General Expressways. General Expressways, Inc., of Indiana, was a subsidiary of General Expressways, Inc., of Connecticut.

* * *

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Q. How about the Yellow Transit Freight Lines? Did it have any subsidiaries or affiliates in 1953, and, if so, what were they?

A. It had no affiliates but it had five subsidiaries, all 100 per cent owned:

15,363 Yellow Equipment Co.;

Yellow Terminals, Inc.;

Indiana Yellow Equipment Co.;

Indiana Yellow Terminals, Inc.;

Detroit Yellow Terminal, Inc.

Q. How about 1957?

A. 1957, those five companies had gone out of existence and there were two 100 per cent owned subsidiaries:

The first one was called Yellow Equipment & Terminals, Inc. (Indiana); and the second one was called Illinois Yellow Equipment Company (Illinois).

Q. What was the situation with respect to Denver-Chicago Trucking Company as to subsidiaries and affiliates in 1953 and 1957?

A. In 1953 Denver-Chicago Trucking Company had no affiliates and no subsidiaries.

In 1957 Denver-Chicago had three subsidiaries 100 per cent owned:

R. B. "Dick" Wilson -- the "Dick" being in quotations -- Inc., of Colorado;

R. B. "Dick" Wilson, Inc., of Nebraska; the "Dick" in that name also being in quotes; and the

Eck-Miller Transfer Company.

15,364 Q. How about Trans-American?

A. Trans-American had one subsidiary in 1953: Highway Vehicles, Inc. And that subsidiary was still in existence in 1957.

Q. What was the situation with respect to affiliates?

A. They had Trans-American Properties, Inc. and Cummins Diesel Service & Sales, in 1953.

In 1957 they only show Trans-American Properties, Inc. The other one was out.

Q. Any affiliates?

A. I beg your pardon?

Q. Were those subsidiaries or affiliates you just described?

A. Those were affiliates. That's Trans-American.

The Highway Vehicles, Inc., was a subsidiary.

Q. Does that complete your listing of the subsidiary and affiliated companies?

A. Well, there's one other, in 1957, under General Expressways. General Expressways, Inc., of Indiana, was a subsidiary of General Expressways, Inc., of Connecticut.

* * *

15,382

DIRECT EXAMINATION
OF WILLIAM A. GORDON

* * *

BY MR. GATES:

* * *

THE COURT: All right, sir. We are on now 5086?

MR. GATES: 5086.

* * *

Q. Mr. Gordon, I note that you began with the year 1952 in the preparation of this study. Will you tell us why you used the year 1952, whereas the rest of the exhibits began with the year 1949?

15,383 A. Prior to the year 1952, the Interstate Commerce Commission forms for the reporting of ton-miles, vehicle miles did not provide for reporting separately such units for rail and water service, otherwise known as piggyback service in this exhibit.

Q. What does this exhibit show, Mr. Gordon?

A. It gives a comparison of the piggyback ton-miles, the percentage of piggyback ton-miles of total ton-miles for Riss & Company, for each of the six competitors, with the sub-total for those competitors, and also for Class 1 Intercity Motor Common Carriers of general freight.

Q. What conclusion do you draw from this exhibit, Mr. Gordon?

A. Riss & Company had a much larger percentage of their total business handled on flat cars by rail than did any of these six competitors. It also had a very much larger percentage than all of the carriers, Class 1 carriers. In 1956, Riss' percentage was 15.7 per cent, compared with 1.3 per cent for the industry. In 1957, the percentage was 62.0 per cent, as compared with 1.5 for the industry.

The 1956 percentage of 15.7 is computed for the entire year 1956. Actually, the piggyback operations of Riss & Company started in October 1956. So that I estimate the percentage of piggyback during the last quarter of 1956

15,384 was approximately the same as the percentage in 1957.

Q. Mr. Gordon, do you have any information or data which would tell us what percentage of the total piggyback operations by the motor carrier industry as a whole were carried by Riss & Company in the year 1957? A. Yes.

Q. What is that information?

A. That information is taken from TRINC's, and it includes all Class 1 and 2 motor carriers of general freight. The percentage of Riss & Company's piggyback ton-miles of the total industry piggyback ton-miles in 1957 was 29 per cent.

Q. How many carriers are represented in the motor carrier industry, that is, the Class 1 and Class 2 carriers?

A. Those figures covered 1133 carriers. So that the Riss & Company carried 329 per cent more piggyback miles than did the average motor carrier in that group in the year 1957.

Q. Mr. Gordon, did the fact that these changes from owner-operator to leased equipment, and then to piggyback were drastic and radical, as you described them, rather than gradualtransition, have any effect upon the operations of Riss & Company, so far as you can tell?

A. Yes. It had far-reaching effects on Riss' operations. It com-
15,385 pletely changed the character of its operations and destroyed the validity of any comparison of Riss & Company in 1957, not only with respect to the comparisons with the six competitors, but also with respect to Riss in its own operations in earlier years.

* * *

15,391 The decrease of commercial traffic of Riss & Company is also shown in the bottom line of the exhibit. That percentage decrease was 28.5 per cent. That means there was a much greater decrease in the explosives traffic than in the other traffic handled by Riss & Company.

* * *

15,398 Q. Mr. Gordon, what happened to the authorized route miles of Riss & Company and the so-called competitors during the period 1953 to 1957?

A. They showed a slight increase of 8.3 percent.

Q. Are those figures shown on TEA's Exhibit 5090?

A. Yes, sir.

Q. Very well, would you explain the exhibit to us, please?

A. This is similar to an exhibit showing this type of information for the period 1949 to 1953.

Q. All right.

A. During the period 1953 to 1957, the authorized miles of the six competitors increased 38.9 percent. This is to be contrasted with the much smaller increase of Riss & Company's authorized route miles of 8.3 percent. You will note that whereas in 1953 none of the companies even approached Riss in the number of authorized route miles.

15,399 Q. You are looking at the column headed 1953?

A. Yes, sir. If you will look in the column headed 1957, you will find that both Yellow Transit and Transamerican had increased their miles to the point where they were operating about three-quarters of the route miles operated by Riss & Company, and General Expressways was operating close to 70 percent of the route miles operated by Riss.

Q. Mr. Gordon, I notice that with respect to Yellow Transit, comparing the year 1957 against the year 1956, Yellow Transit more than doubled its route mileage that year. Can you explain what happened?

A. I don't know all the details of those changes in route miles, but I do know that Yellow Transit acquired Michigan Motor Lines between 1956 and 1957, and that acquisition accounts for most of the increase in route miles of Yellow Transit in that year.

Q. Did Denver Chicago and Transamerican also make acquisitions during the 1956-1957 period?

A. Yes, Denver Chicago made some acquisitions and Transamerican also.

Q. Now, you have already referred to the mergers which took place with respect to General Expressways. A. Yes.

Q. Are the results, in so far as authorized miles, of these mergers reflected in the exhibit?

15,400 A. Yes. The 1955 merger did not affect the route miles of General Expressways.

Q. Can you tell us why it didn't?

A. Well, as I understand it, those lines were already operated by General Expressways.

Q. Under some kind of a lease arrangement?

A. That is my understanding. The 1957 merger, however, substantially increased the route miles, as is shown on the exhibit.

Q. What conclusions do you draw from Exhibit 5090?

A. I think the principal conclusion is that none of these competitors is any more comparable with Riss & Company in 1957 than in 1953; in fact, the dissimilarity is still very marked because of the acquisitions of additional route miles and there is also the difference that whereas Riss & Company was remaining almost stationary in route miles, these other companies were expanding their systems.

Q. Assume that at the end of 1953 Riss lost substantial authority with respect to transportation of ammunition explosives, does this exhibit show that loss of route mileage?

A. No, sir; this exhibit does not include temporary authorizations of that kind.

Q. Will you turn now, please, to TEA's Exhibit 5091, which is entitled "Traffic Density, Revenue Ton Miles per Route Miles in Thousands" and tell us what this exhibit shows?

15,401 A. This exhibit shows the ton mile density over the period and you will note that it generally conforms with the fluctuations in Riss & Company's traffic. In other words, in 1954 when the explosives business went out of the picture, Riss's density dropped 38 percent.

Q. That is from 29,000 revenue ton miles to 18,000 revenue ton miles as shown in the column entitled 1953 and 1954?

A. That is correct. Likewise, from 1954 to 1956, it increased from that 18,000 ton miles per route miles up to 27, almost as much as in 1953. That

was an increase of exactly 50 percent. Then again in 1957, it dropped from 27,000 ton miles down to 14,000 ton miles, a decrease of 48 percent.

Q. What was happening to the so-called competitors during this period?

A. Well, during the period over this whole period, I might add that Riss & Company decreased 52 percent. The competitors as a group were remaining about stationary, some of them increased and some of them decreased, and these changes, a good many of them can be related back to the changes or the additional route mileage.

Q. You mean by acquisition or merger?

A. That is right.

Q. Give us an example.

A. That may seem strange because one example of where a merger actually decreased the density is in connection with Yellow Transit Freight Lines.

15,402 You will notice that in 1956 they had 31,000 ton miles and they dropped to 20,000 ton miles in 1957, and you will recall that that is the year in which they acquired substantial carriers, a large carrier, Michigan Motor Freight, which was a light density line and so that diluted the density of the new system because of the acquisition of Michigan Motor Freight.

Q. Does Riss's changeover to piggyback reflect itself at all in this exhibit?

A. Yes, it shows the large decrease in density in the year 1957.

Q. During this period, in your opinion, is Riss & Company comparable to the other companies in terms of traffic density?

A. No; I think with the possible exception of General Expressways, I think they were somewhat comparable to General Expressways.

Q. Would you turn now, please, to Exhibit 5092, which is entitled "Average Operating Revenue per Ton Mile" and explain what this exhibit shows?

A. This is similar to the companion exhibit for 1949 to 1953. First of all, I would like to talk about the column about the middle of the sheet which is headed "Percent Increase 1957 vs. 1953," and in the next to the last line of the

exhibit, you will find the percentage increase in revenue per ton miles of the group, which reads 10.6 percent. Right under that, you will find that Riss &
15,403 Company's revenue per ton mile declined 17.4 percent, so there was a considerable change in the comparative figures for Riss and the group. You will notice that in 1954 Riss has the highest ton mile revenue that it had in this period.

Q. How does it compare in that year to the so-called competitor carriers?

A. It was substantially above the competitor carriers and in fact was the highest of any except General Expressways, it was in second place. Between 1954, 1955 and further in 1956 and 1957, the ton mile revenue declined drastically, so that by 1957 Riss & Company were in seventh and last place, they had the lowest revenue per ton mile of any of the other carriers shown on the exhibit.

Q. Does this exhibit also reflect, Mr. Gordon, the pattern of a peak in 1953, then a valley and then another peak in 1956 and another valley in 1957?

A. Well, not as far as the revenue per ton miles is concerned.

Q. All right. Can you tell us whether the Form A offers any explanation as to why the average operating revenue per ton mile in 1954 is so much better than it was in 1953, and then you have the rapid fall off in 1955 and 1956?

A. Well, there are a number of factors affecting the revenue per ton mile.

Q. Well, what are they?

15,404 A. The volume of less truckload traffic has an effect; the commodity mix, in other words, the proportions of high rated and low rated traffic have a bearing; and third and in my opinion very important, the average haul has a very substantial bearing on the average revenue per ton mile.

Q. Would you for the moment look at TEA's Exhibit 5093, which is the next exhibit, and compare the average haul in 1953 compared with 1954?

A. In 1953, the average haul was 712 miles and the revenue per ton mile was 4.83. In 1954, the revenue per ton mile, the average haul, rather, was down to 659 and the average revenue per ton mile went up to 5.26. In other

words, with a drop in the average haul, you got an increase in the revenue per ton mile.

Q. Mr. Gordon, was the average operating revenue per ton mile in the year 1955 as compared with the year 1954, affected by the explosives business?

A. In my opinion, it was not. The explosives business in 1955 was approximately the same as in 1954; so there must have been other factors which affected the drop from 5.26 to 4.63 per ton mile. In my opinion, the principal reason for that drop was the substantial increase in Riss & Company's average haul in 1955. The haul increased from 659 miles in 1954 to 781 miles in 1955.

Q. Mr. Gordon, have you been informed that Riss & Company is complaining of a rate reduction in transportation of ammunition explosives which oc-
15,405 curred in the fall of 1957 -- 1955, excuse me? A. Yes, I have.

Q. Now, Mr. Gordon, I want you to assume that there was no significant rate reduction in the railroad rates until October 20, 1955 --

A. You are speaking of explosives?

Q. That is correct. That Riss's gross revenues for the entire year 1955 were $25,737,000; that the rate reduction which became effective October 20th was substantial only with respect to ammunition and explosives shipments within eastern territory -- you know what eastern territory is? A. Yes, sir.

Q. And that Riss's revenues from such shipments in eastern territory in all of the year 1955 amounted only to $270,000 or less than 1.1 percent of Riss's total revenue during that year. I want you to assume further that the greatest rate reduction by the railroads, complained of by the plaintiff here, amounted to a reduction which was 25 percent less than the rate which Riss & Company was then charging; and assume finally, that in order to keep this explosives business, Riss & Company then reduced its rates the next day. Could that change in rates have been responsible for the drop in the average operating revenue per ton mile?

A. No, sir. I haven't made the calculations there, but I am sure from the figures that you have given and the small percentages involved, that
15,406 the drop in the rate would be a very minor one and nothing like the decrease shown on this exhibit.

* * *

15,408 Q. I had just asked you to turn to Exhibit 5093. You have already referred to that exhibit and testified with respect to it in connection with your testimony as to Exhibit 5092.

15,409 Do you have any further comments with respect to the average haul during the period 1953 to '57 of Riss & Company and the so-called six competitors?

A. Yes. In 1953 Riss & Company's average haul was below that of the group -- 712 miles compared with 751 miles for the group. However, by 1957 Riss' average haul had increased about 35 per cent and was up to 960 miles -- approximately 200 miles greater than the average haul of the group.

Now, this increase in average haul in 1957 indicates that Riss & Company were concentrating on their long-haul traffic, and this may well be part of their concentration on the piggyback traffic, and they were not paying attention to the short haul. Now, the explanation lies in that group. Either the concentration in the long haul, concentration on piggy-back, or both.

Q. Mr. Gordon, whereas the average of these six so-called competitors goes from 751 to 762, which is only an 11-mile increase, does the same kind of situation exist with respect to the individual carriers and, in your opinion, is it appropriate to attempt to compare Riss with the individual carriers insofar as average haul is concerned?

A. The same situation does not exist with the individual carriers be-

15,410 cause some of them show an increase in average haul and others shown a decrease, and it is inappropriate to attempt to make comparisons. The principal reasons for changes in the case of some of these lines lies in the fact that they had the substantial additions to their systems by acquisitions, or mergers. For example, Yellow Transit acquired the additional route mileage when it acquired the Michigan Motor Freight between 1956 and 1957. The reason that their average haul goes down is that Michigan Motor Freight, which was quite a large carrier covering extensive territory, had a low average haul of less than 200 miles. So that when that was merged in with Yellow Transit it diluted the average haul of the new company,

and the decrease from 737 miles to 560 miles.

Q. By reference, Mr. Gordon, to the preceding exhibits, can you state whether or not there is any correlation between the average haul and the average operating revenue per ton mile?

A. Well, I think it is quite clear that there is a correlation, particularly as to Riss & Company, where the average haul over this period from 1953 to 1957 increased 34.8 per cent. The revenue per ton mile during that period went down 17 per cent.

There is also correlation shown in each of the periods that we have shown, each of the shorter periods that we have shown:

15,411 For instance, the year-by-year comparisons from 1953 to 1954 show a proper correlation, and from 1954 to 1956 there is a correlation. Also, a slight correlation between 1956 and 1957 when neither the average haul nor the revenue per ton mile changed substantially.

Q. You testified yesterday with respect to the operating revenues per vehicle mile during the period 1949 to 1953. Did you make a similar study for the period during 1953 to 1957? A. Yes, I did.

Q. Are the results of that study shown on TEA's Exhibit No. 5094?

A. They are.

Q. What comments do you have to make with respect to this exhibit, please, Mr. Gordon?

A. In the first place I would like to point out that in each year shown on this exhibit, Riss is the lowest of all of the carriers shown and is substantially below the average of the six competitors.

You will notice that whereas the competitive group increased its revenues per vehicle mile over the period, by a percentage of 22 per cent -- 22.4 -- during the same period Riss had a very small increase of only 2.6 per cent.

15,412 In the second place, Riss shows a slight increase from 1955 to 1956, from 45.22 cents to 46.25 cents.

This would seem to indicate that they had improved their loading which had a tendency to offset the lower rate of traffic that they were handling.

You will recall that in 1956 the revenue per ton mile was down to about 4 cents, but their loading was improved and in my opinion that is responsible for some increase in the revenue per vehicle mile.

The only other point I would like to make in this exhibit is in connection with Yellow Transit and General Expressways, in connection with the 1957 versus 1956 percentage increase.

That is the next to the last column on the right-hand side of the exhibit.

And you will notice that there percentage increases for General Expressways are 14.9, and for Yellow Transit Lines of 9.8 are the two largest on the exhibit.

There again those increases reflect the effect on their operations of the mergers and acquisitions of those companies in that period.

Q. Mr. Gordon, looking at the sub-total and Riss & Company, I notice that during the five-year period Riss & Company's revenues per vehicle mile in absolute terms increased during this five-year period 1.17 cents, whereas
15,413 the average of the six so-called competitors increased 11.93 cents, and that the difference between the average operating revenue per vehicle mile in '53 was roughly 8 cents, and by 1957 it had spread to about 19 cents. Is that a significant factor in your opinion?

A. Yes, it certainly is, because this factor is a very important one in determining the success of the operations of any motor carrier.

Q. Do you believe that in terms of operating revenues per vehicle mile during this period Riss & Company is comparable to any of the so-called six competitors?

A. No. It presents a striking contrast to each one of the competitors.

Q. Do you think it is appropriate to attempt to compare Riss with these other carriers in terms of operating revenue per ton mile?

A. By no means.

Q. Did you make any investigation, Mr. Gordon, to ascertain what percentage of the Class I truckers of the United States in the year 1957 had operating revenues of less than 60 cents per vehicle mile? A. Yes, I did.

Q. What were the results of that investigation?

A. Only 18 per cent of the truckers have revenue per vehicle mile which are less than 60 cents per vehicle mile.

15,414 Q. Turn now, if you will, please, Mr. Gordon, to Exhibit 5095, entitled "Less Truckload Revenues." This is the counterpart of an earlier exhibit covering the earlier periods, I believe. A. That's right.

Q. First, let me invite your attention to Denver-Chicago in the year 1955, where you have the figure of $14,076,000.00 in less truckload revenues: Does that figure appear in the Form A?

A. It does not.

Q. Will you tell us, please, where you got that figure?

A. Well, the form A showed a figure of $6,700,000.00 and that figure didn't look right to me and I inquired about it. One of the officers of Denver-Chicago confirmed that in the annual report of that company to the Commission for 1955 they had inadvertently reversed the truckload and less truckload figures in several instances, and less truckload revenues was one of the instances where they had done that. The figures shown here have been confirmed as being correct, that is, the figure of $14,076,000.00, by an officer of the company.

Q. Now, having made that explanation of the change from the Form

15,415 A, please tell us what this exhibit shows and the conclusions you draw therefrom.

A. You will note, looking at the next to the bottom line which shows the sub-total of the group, that throughout this period the group has increased steadily with the exception of the year 1954, which was the year previously referred to as being affected by the cessation of hostilities in Korea.

Q. What do you mean by "the group had increased steadily?"

A. Their less truckload revenues have shown a steady increased throughout the period. That increase amounted to 55 per cent over the five-year period.

Q. What happened to Riss & Company during that period?

A. Riss & Company shows an erratic trend. They show a large drop in 1954. Then in 1955 they are back even, practically, with 1953. They had an increase in 1956, and then in 1957 they are down almost half.

In my opinion this reflects the policies of Riss & Company -- the policies of Riss & Company's management -- in discouraging less-truckload freight during part of this period, and also reflects the closing of terminals which undoubtedly had an effect on less-truckload traffic.

Q. Mr. Gordon, this exhibit shows the rate of increase, or decrease, as the case might be, in less-truckload revenues during the period 1953 to 1957, inclusive. Did you make any investigation to ascertain what percentage of the total business of Riss & Company and of the six competitors was represented by less-truckload revenues in the year 1957?

15,416

A. I have the figures here for Riss & Company: Riss & Company LTL business amounted to only 34 per cent.

Q. Of its total? A. Of its total. All of the other companies had very much higher percentages than Riss & Company.

Q. Do you recall what those percentages were?

A. I don't recall them exactly, but I may have them here in my briefcase. I don't seem to have them here, Mr. Gates.

Q. Would it refresh your recollection if I suggested that the individual carriers for the year 1957 had percentages that ran from 42 to roughly 66 per cent?

A. That sounds about right. My recollection is that there were a number of them that were over 50 per cent, and some that were over 60 per cent.

Q. Now, whereas, as shown by Exhibit 5095, the less-truckload revenues of the six competitive carriers increased percentagewise 55 per cent during this five-year period, and Riss' decreased 36 per cent, what was happening to the trucking industry generally?

15,417

A. The trucking industry, with respect to the LTL traffic, was increasing. In other words, motor carriers were handling substantially more less-truckload business, getting more less-truckload revenues, and increasing their share in the whole market of less truckload, less carload, forwarder business.

Q. Is the share of the truckers in the less-truckload business reflected in Exhibit TEA No. 5096? A. It is.

Q. Would you explain that exhibit to us, then, please?

A. I might call attention, first, to the footnote which explains that in 1957 the figures include Class II carriers, so as to make them comparable with the companies included in the figures for the years prior to 1957.

Q. That was by reason of a change in definition of Class I and Class II carriers by the Interstate Commerce Commission? A. That's right.

Q. All right, proceed, will you, please?

A. Between 1953 and 1957 Class I motor carriers increased their
15,418 revenues on less-truckload freight by over $400,000,000.00 -- nearly half a billion.

Q. Now, you are comparing the figure of '53 with '57, which is $1,330,000,000 against $1,760,000,000-some-odd. Is that right?

A. That's right. And that is an increase of 32 per cent. During that same period the railroads' revenue on less-carload freight decreased 21-1/2 per cent. They were going counter to the trend shown by the trucking companies.

The freight forwarders had an increase in their business but not as great proportionately as that enjoyed by the motor carriers. Their increase was only 11.4 per cent. During this same period Riss & Company, with their policy of discouraging less-truckload traffic, had a decrease in their less-truck-load revenues of 36.2 per cent. And I might mention that although the figure doesn't show on this exhibit, that, based on the figures on the previous exhibit, the six competitors of Riss increased their less-truckload revenues 55.3 per cent. In other words, they did better than the industry as a whole.

Now, one reason that they were able to do that was because they were merging other companies in with theirs. They were getting larger systems, and
15,419 of course that meant that they were handling more traffic and going along with that, since they were encouraging less-truckload traffic, they got more revenue out of less-truckload traffic.

Q. How is the less-truck load business distributed as between the motor carrier common carriers and the railroads?

A. That is shown in the lower part of the exhibit which is headed "percentage distribution," and you will note that between 1953 and 1957 the

trucking companies increased their percentage of the business from 65-1/2 per cent to 72.3 per cent.

During this same period the railroads were losing ground. They went from 15.8 per cent down to 10.4 per cent.

The Class A forwarders remained nearly stationary. They did lose a little ground -- from 18.7 to 17.3 per cent.

Q. Now, by reference to Exhibit 5071, will you tell us, please, what happened to the distribution of the less-truckload business or less-carload business as between the railroads and the trucking companies during the period from 1950 to 1957?

15,420 A. Well, those percentages show about the same thing except the change is magnified by reason of the fact that you are including a larger period of years:

For example, in 1949, the trucks handled 61 per cent of the market. By 1957 they had got up so they were handling 72 per cent.

The railroads' share of the market was cut in two. They handled 21.3 per cent in 1949, and they were down to 10.4 per cent in 1957.

The forwarders held their own. They were 17.4 per cent in 1950, and 17.3 per cent in 1957.

May I say that where I inadvertently used the year 1949 in these percentages of the market, I would like the record to show that that should be 1950.

Q. Since we are making confessions I will also make a confession: I referred to Exhibit 5071 and it should have been 5072.

Go ahead, please, Mr. Gordon. Do you have any further comments with respect to that exhibit?

A. No, sir.

Q. Turn, then, if you will, please, to Exhibit 5097, which is entitled "Commodities Usually Carried in Refrigerated Trailers by Riss & Company."

Tell us, please, what conclusions you draw from this exhibit.

15,421 A. First of all, this was taken, as shown here, from the freight commodities statistics of Riss & Company.

Q. Why didn't you go back before the year 1956?

A. 1956 was the first year that the Interstate Commerce Commission required motor carriers to report commodity statistics in this form.

Q. And you have not included any comparison with the six so-called competitors. Why did you not include any of them?

A. Well, these reports are not released to the public for the individual companies. As I understand it, for some reason the Commission keeps these reports confidential, and does not release them to the public.

Q. Now, will you explain the exhibit?

A. The exhibit shows that for the total of these nine commodities which normally would be carried in refrigerated trailers, Riss & Company had a very large decrease in this class of traffic in 1957 compared with 1956, the decrease amounting to approximately $1,800,000.00.

Q. And that is derived from subtracting the figure of $2,106,000 from $3,894,000, the bottom figures in the third and sixth columns?

A. That's correct.

Q. All right.

15,422 A. Now, in each of these commodities that are shown here, you will note that Riss & Company carried less in 1957 than they did in 1956, with the sole exception of the first item, which is fruits and berries, fresh, frozen. There, they had an increase from eight truckload shipments to 13 truckload shipments.

Q. How much is the increase in freight revenue?

A. The increase in freight revenue was about a thousand dollars.

Q. All right.

A. The third point that I would like to call attention to relates to the principal commodity involved in this loss in traffic, and that is Commodity No. 215, the third one down on the sheet: Meats, fresh, NOS.

THE COURT: Tell us, again, will you, what does "NOS" stand for? It may be that has been explained. I don't know.

A. It stands for "not otherwise specified."

THE COURT: I couldn't remember it.

MR. GATES: That refers, if the Court please, to the classifications given with respect to various commodities, and meats "not otherwise specified" covers a great gamut of different kinds of meats.

THE COURT: I see; pork chops and everything else.

15,423 MR. GATES: That's right.

THE COURT: All right. That's the first thing that came to my mind. Thanks.

MR. GATES: Go ahead, please, Mr. Gordon.

THE WITNESS: You will note that there is nearly a million and a half decrease in the movement of this particular commodity by Riss as between 1956 and 1957. This, I think, serves to corroborate the testimony of some of the witnesses for the packing houses that appears in this record.

BY MR. GATES:

Q. Now, please turn, if you will, to the next exhibit, 5098, entitled "Average Loading per Vehicle Mile."

In your opinion, is this exhibit important in terms of determining comparability or lack of comparability?

A. I think it is an important one in that respect, and it is an important one in judging the success or lack of success of the operations of a trucking company.

Q. Is it significant with respect to efficiency?

A. Yes, I believe it is.

Q. Now, would you explain the exhibit to us, please?

A. It is similar to the companion exhibit covering the period 1949 to 1953. It should be noted, in the last line of the exhibit, at the bottom of the exhibit, where the figures for Riss & Company are shown, that Riss & Company

15,424 is substantially below the weighted average for the group right through

the period. That is also true for each of the individual competitors shown in this exhibit, in every year except one, and for every competitor except one.

Now, that sole exception is General Expressways in 1956, where you will note that General Expressways had an average loading of 10.02, and Riss & Company 11.27.

With that exception, Riss & Company is below everybody all the time.

In my opinion, with respect to comparability, Riss & Company is not comparable to any of these companies shown on here with the exception of General Expressways.

Q. Now, I notice that in 1957 General Expressways loading increased 17 per cent. Have you any explanation of that rather marked increase as compared to any of the rest of the carriers; and I am referring specifically to the column second from the right, headed "1957 versus 1956."

A. Yes. In 1957 General Expressways" figures include the effect of the merger in that year, and in my opinion that may well explain their large increase, the biggest increase shown by any of the carriers between 1956 and 1957.

15,425 Q. Mr. Gordon, do you have any opinion as to the reasons for the low average loading per vehicle of Riss & Company during this period when it was substantially below the average, and as you pointed out, in only one year did it exceed any carrier in its average loading?

A. Well, I think that the imbalance in traffic undoubtedly had a bearing on Riss & Company's average loading. In other words, they were operating deadhead or empty vehicle miles.

Q. You expressed the opinion it was due to the imbalance of traffic. Were you able to do any testing or checking to confirm or deny the opinion which you expressed?

A. Well, one check that I made was to compare the average load per truckload shipment of Riss & Company with the average load per truckload shipment of all Class I common carriers of general freight.

Q. Where did you get the figures that you used for this checking?

A. From the commodities statistics of Riss & Company that were furnished by Riss & Company, and for all Class I carriers from the I. C. C. publication which shows the figures for all Class I carriers.

Q. As to Riss & Company, you used the same source that you used in the preparation of 5097?

15,426 A. That's right.

Q. Very well, proceed.

A. In 1956 Riss & Company's truckload shipments averaged 14.17 per shipment, and all Class I common carriers averaged 14.13 per shipment.

That indicates to me that so far as their load per truck they were not different from other carriers. They were comparable in that respect. But with respect to the average loading per vehicle, taking in the empty miles, Riss & Company is away below other carriers.

Now, in addition to that, the record has something to say on Riss' imbalanced traffic. It refers specifically to the drop in the refrigerated traffic as causing an unbalance in Riss' movements. That is from the West and the Southwest to the East.

In that respect, there is also testimony that the reason for this imbalance is the quality of Riss' service, which was responsible for the cessation of the movement of that refrigerated business.

Q. You testified yesterday that one of the criteria of efficiency of operation was equipment utilization, and you had the exhibit for the period 1949 to 1953. Did you prepare a similar exhibit for the period 1953 to 1957?

A. I did.

Q. Are the results shown in Exhibit 5099?

15,427 A. They are.

Q. Now, would you tell us about that exhibit, please.

A. Well, again referring, first, to the group figures which are shown in the line marked "Sub-total," the next to the last line of the exhibit, you will note that throughout the period from 1953 to 1957 there is a modest

increase in utilization; the increase being 7. 9 per cent from '53 to '57.

The increase would probably have been greater except for the fact that Yellow Transit Lines and some of the other companies were affected by mergers in which they acquired additional equipment, and apparently they weren't able to make quite as good use of that equipment in 1957 as they had in the prior years.

Now, turning to Riss & Company, the figures for which appear in the last line, here again we have an erratic performance record by Riss & Company:

In 1953 the utilization was 160. In 1954 it increased slightly. That was the year in which the change was made from owner-operator to the equipment leased from T. M. & E.

In 1955 Riss & Company improved substantially and got up to 302 vehicle miles per power unit per day. That was the best year that they had. They dropped off in '56, and they dropped off materially in 1957, with the
15, 428 advent of the piggyback.

Q. I note you have a footnote "E" with respect to Riss & Company for the year 1957, and that footnote says, "Recomputed."

What do you mean by that?

A. Well, I recomputed that figure because to my mind the figures reported in the Riss & Company's Form A for 1957 were not correct.

Riss & Company reported 171 units as the average number of units that they had in 1957.

T. M. & E. still owned and leased to Riss more than 490 tractors, so that it was obvious to me that the figures should be approximately 490 instead of 171. And that is why I recomputed the figure.

I might say that the record indicates that Riss leased all of these 490-odd units on an irrevocable lease which served as a guarantee of the payment to Yellow Motors Acceptance Corporation of the payments due on that equipment by T. M. & E.

Q. You assumed, then, that Riss & Company had available to it all of the tractors which it had leased on this five-year lease from T. M. & E.;

is that correct?

A. That's right.

Q. What conclusion do you draw from the low equipment utilization in so far as Riss & Company is concerned?

15,429 A. Well, it seems to me that Riss, or Mr. Riss, or the management of the company, made a serious mistake when these tractors were bought. Either that, or they made a -- that was back in 1954 -- or they made a serious mistake when they parked them against the wall in 1957, as Mr. Riss testified, when they changed over to piggyback.

That change, by the way, was late in 1956.

To me it is quite possible that both of these decisions were mistakes.

Q. Do you think that 1957 is a proper terminal year for Riss & Company under these circumstances for the purpose of making a comparison?

A. No, I am very sure that it is not; that Riss & Company is by no means comparable to the other companies or even comparable to itself in the earlier years.

Q. Turn now, please, to Exhibit 5100, which is entitled, "Investment in Net Carrier Property per Route Mile, 1953 to 1957."

Will you explain that to us, please?

A. Well, the same explanation as to the figures applies as to the companion exhibit for the period 1949 to 1953:

First, I would like to point out that Riss & Company is not comparable in the amount of investment per authorized route mile -- that is the lower part

15,430 of the exhibit -- except to Yellow Transit Lines; and even there is not comparable in the last two years shown, in 1956 and 1957.

In other words, Riss in those two years is not comparable to any of these companies.

For example, taking the year 1957, Riss' investment per route mile is only $5.00;

Yellow Transit, which is the nearest one to it, is $98.00.

And Denver-Chicago Trucking Company is $1,015.00.

The others are within the range of the figures I have given.

Q. Mr. Gordon, in 1954, the record shows that T. M. & E. acquired and then leased to Riss & Company somewhere in the neighborhood of $14,000,000.00 worth of operating equipment:

Now, assume, for the moment, that the $14,000,000.00 were consolidated into this exhibit -- in other words, you had a consolidated statement for Riss & Company and T. M. & E. -- would that indicate to you any comparability?

A. Well, it would certainly give a better picture of the investment in the equipment used for the handling of the business of these companies.

As it stands now, because of the fact that Riss & Company has T. M. & E. on the side, T. M. & E. has the investment in the equipment, and some of the terminals, Riss & Company's figures are really meaningless.

15,431 Now, if you adjust them to include that equipment, they would certainly be more meaningful.

Q. In your opinion would the investment of General Expressways, for example, of $5,000,000.00, or of Denver-Chicago, of $4,539,000.00, be comparable to an investment of $14,000,000.00?

A. No, indeed. You would have to combine about three -- the three largest companies -- in order to get comparable investment, or investment comparable to that which is used by Riss & Company in its operations.

Q. Does Exhibit 5100 reflect any trend with respect to ownership or leasing of properties?

A. It shows a trend toward more owning of property rather than leasing. You will notice that the investment in net carrier property has nearly doubled for the six competitors.

Now, those figures are not conclusive in that respect, because they include other things besides equipment. But equipment is by far the larger part of the investment in the normal motor carrier. So that they do indicate that trend.

Q. If two companies were truly comparable, Mr. Gordon, would
15,432 you expect them to have substantially the same route mileage?

A. Yes, I would.

Q. Would you expect them to operate over substantially the same routes?

A. Yes, I would.

Q. Would you expect them to serve the same areas and same traffic centers?

A. Yes, I would.

Q. Would you expect them to have substantially the same revenue ton miles on the same gross operating revenues?

A. If they were truly comparable, yes.

Q. Would you expect them to have substantially the same equipment utilization?

A. Yes, sir.

Q. The same traffic density?

A. Yes, sir.

Q. And the same investment in net operating equipment?

A. Yes, sir.

Q. What Riss & Company --

A. Excuse me. I think that last question was not stated quite -- I think it was a mistake.

Q. I asked you would you expect them to have the same net invest-
15,433 ment in carrier operating equipment.

A. Yes.

Q. Now, was Riss & Company substantially the same as the so-called competitors in any of the regards that I have just asked you about?

A. Well, I think in some years there were some of the companies that were comparable with respect to some of those figures, but with those few exceptions, which I believe I have testified to, Riss & Company was not comparable.

Q. Mr. Gordon, I want you to assume for the purpose of this question that Mr. Riss has testified in this proceeding that most trucking companies had a company on the side.

Did you make any investigation for the purpose of determining the trend of the motor carrier industry with respect to the ownership of its vehicles, as compared with the leasing?

A. Yes, I did.

Q. Are the results of that study shown in Exhibit 5101?

A. They are.

Q. Would you please tell us what that exhibit shows?

A. That exhibit shows the vehicles miles in intercity highway service for all Class I motor common carriers of general freight, by years,
15,434 from 1949 to 1957.

It also shows the vehicle miles that were operated by owned vehicles, and the percentage that those owned vehicle miles were of the total vehicle miles.

Thus, in 1949 there were 61.5 per cent of the vehicle miles that were operated with vehicles owned by the companies operating.

That dropped down a little in 1950, the lowest point in the period, where only 58.5 per cent of the service performed was performed by owned vehicles.

But by 1957 you will notice that the percentage had increased from 67 up to 67.9 per cent.

Now, the complements of these figures, in other words, the difference between these figures and 100 per cent, would represent the miles performed by leased vehicles, whether they were leased from affiliates or from outsiders.

Q. Or owner-operators?

A. That's right.

Q. Well, now, assuming that Mr. Riss testified as I have stated in my prior question, based upon this exhibit, do you believe Mr. Riss to be

correct, that most trucking companies have a company on the side?

A. I do not.

* * *

15,436 BY MR. GATES:

Q. Mr. Gordon, did you in connection with your studies for the period 1953 to 1957 make an analysis of the direct line haul truck expenses of the six competitors of Riss and Company and a comparison of those six with Riss and Company?

A. Yes, I did.

Q. Is TEA Exhibit 5101 a summary of -- 5102, excuse me, a summary of TEA exhibits 5103, 5104, 5105,and 5106?

A. Yes, and it also includes one of the earlier exhibits, the one for 1953.

Q. And that is TEA Exhibit 5077? A. That is right.

Q. Now, would you please direct your attention to Exhibit 5102, and by reference to the detailed exhibits 5103 through 5106, and tell us what this exhibit shows?

A. The detailed exhibits 5103 through 5106, inclusive, were com-
15,437 pared in the same way as the companion exhibit covering the years 1959 to 1953, inclusive. I have already explained how those figures were compiled.

Directing your attention again to TEA Exhibit 5102, there are three points to which I would like to call your attention. Throughout the period, you will note that the figures in the last column, at the right hand side of the exhibit covering Riss and Company, are considerably higher throughout the period than the figures for the total of the six competitors, which appear in the second column to the right.

In 1953, Riss had the second highest cost of the seven companies shown. The only one that was higher was General Expressways, which had a unit cost of $27.82, compared with Riss and Company's cost of $26.73, both of those figures being on a thousand revenue ton mile basis.

In 1954, and in the succeeding years, in fact, in each of the years from 1954 to 1957, Riss and Company's unit costs were higher than each one of the competitors. As to the trend during the period, taking first the sub-total of the six competitors, you will note that there is only a modest increase there, from $20.33 to $21.26 per thousand ton miles.

Q. About five percent?

A. Yes. It averages just about one percent per year. In the last column, however, you will note that Riss and Company's costs range from a low in 1956 of $26.43 --

Q. 73 cents, I think. You said 43.

15,438 A. I beg your pardon?

Q. I think you said $26.43. It is $26.73, isn't it?

A. That is the range. $26.43 is the low cost and that is in the year 1956. So that there is a range between the cost in that year and the cost in the very next year, 1957, where the cost got up to $40.81. That is an increase of over 40 percent.

Q. Will you now turn to 5103 and, if you can, explain to us the breakdown of the expenses per thousand highway revenue ton miles, which is the lower half of the exhibit?

A. Well, I would like to make a comparison with Riss and Company's unit costs in 1954 with the comparable figures on Exhibit 5077, and I think if you turn back to that exhibit and fold the pages over, like this, that you will be able to compare the unit costs. You will have to sort of fold them over so that the item headings on the left-hand side of Exhibit 5103 are visible.

Now, you will remember that in 1954 the operations of Riss and Company were substantially different from what they were in 1953. Not only was their traffic down, but they acquired through rental from T.M. & E. the use of a large amount of new tractors and trailers. Those tractors and trailers they paid very large rentals for commencing in 1954. That change in the operations and the change in the accounting also affected their unit cost figures.

15,439 When they were renting trucks from the owner-operators, the owner-operators paid the fuel costs and the repair costs, and they paid themselves for driving the trucks out of the rental that they got.

Now, looking at the first item on these two exhibits, comparing 1953 with 1954, you will find that the first item is repairs and servicing, and in 1953 that cost $1.06 per unit. That figure is in the last colum of Exhibit 5077.

The corresponding figure in 5103 is $1.82.

Q. That is for the year 1954? A. '54; that is correct.

Q. All right.

A. And might say by the year 1955 that figure had risen to $2.30. You can see that if you just turn the next page. You will see $2.30. So there was a large increase in repairs and servicing, which was brought about primarily by the change in their methods of operation.

Now, the next large item is the third item, $4.86. I am now looking at Exhibit 5077 again.

Q. That is referring to drivers and helpers?

A. And that is drivers and helpers, and that cost is $4.86 in 1953.

In 1954, and this figure is on TEA 5103, you will note the figure is $8.77, almost double; and by turning the page to the following exhibit, you will
15,440 see that in 1955 the drivers and helpers cost per thousand ton miles was increased to $11.42, nearly three times what it was in 1953.

The next figure on TEA 5077, for the year 1953, is a very small figure. It is only 21 cents per thousand ton miles.

Q. What is that for? A. That is for fuel.

And then look what happened to it with the change in operation. In 1954 that figure rose to $1.77 per thousand ton miles; and in 1955 it was up to $3.54.

Now, there are several reasons for that. The two important ones are, first, the change in their rental arrangements. Under the old rental arrangements in 1953, the owner-operator or the driver paid for the Diesel oil or the gasoline, as the case may be.

In 1954, you have a mixture. You have part of a year where the owner-operator is paying for the fuel, and part of the year where Riss and Company are buying their own Diesel oil.

In 1955, you get the full effect of Riss and Company buying its own fuel, when it goes to $3.54.

Q. That is exactly double? A. May I finish.

Q. I say: Isn't that just exactly double?

A. Well, it is double what it was in 1954, and it is 17 times what it was in 1953.

* * *

15,448 Q. Was the purchase of the five hundred tractors and twelve hundred trailers in the year 1954 a large one for the industry?

A. Yes. It was, paraphrasing Mr. Riss's words, because I don't remember them exactly in his testimony, he stated that it was the largest purchase of equipment made by any trucking company, ever made by a trucking company, up to that tim

15,449 Q. In your opinoin, was the acquisition of such a large new fleet in the year 1954, bearing in mind the operating results of the company which you have studied and portrayed in these exhibits, the exercise of sound and prudent business judgment? A. In my opinion, it was not.

Q. Would you state the basis for your conclusion?

A. Well, in the first place, Riss and Company was making a very drastic change in their operations when they decided to go from the, primarily from the owner-operator method to what was tantamount to an owning basis, considering for the moment that T.M. & E. is in the same family.

In the first place, he was acquiring a great many new tractors built to his specifications and incorporating new features in the art.

Q. Don't you think that is a good thing?

A. Oh, I think that is an excellent thing, but I think that he should have gone at it a little more slowly. I think it would have been well if he had ordered a much smaller number of these new tractors and tried them out before going into the business in a wholesale manner. Now, he could very well have done that and continued a certain portion of his owner-operator operations.

In addition to that, he was faced with a great many other expenditures in addition to just the bare equipment, because he had to furnish drivers. Prior

15,450 to that time, the drivers came along with the tractors that he was renting; but when he cut that off, he had to go out and get new drivers; and to

add to his troubles he had to get double the number of drivers for these tractors, particularly the ones that he was going to use as sleeper cab operations.

These new tractors had provisions for one man sleeping while the other driver relieved him. So that meant a great many drivers had to be obtained and trained and broken in.

Further than that, he had to make provision for garage facilities and repair facilities for this equipment because under the old arrangements most of the equipment that he was using was repaired by the owner-operators. He had to get new personnel to take care of this repairs and servicing work.

All in all, he had bitten off quite a mouthful when he went into this thing in a wholesale manner.

Now, I don't know of any other company that has ever made such a tremendous purchase of equipment all at one time, and, well, you take the airline business right now.

The airline business is changing over to jets, but they don't change over overnight. They get their jets and they put the first ones on the longest runs, where the most economy is obtained. As more of them come in, they
15, 451 replace other prop service with the jet service, but they don't stake everything on the jets. They have to train pilots, especially for operating on the jets, and they have to train mechanics for the repairs because the jet is entirely different from a mechanical standpoint than the propeller-driven planes.

Take another example, the railroads, back a number of years ago, back in the 30's, were considering dieselization. They started in in a very small way in dieselization.

And where did they start? They started in their yards, where the switching was done. And even back before the 30's, in the 20's, there were a few small diesel electric switches used in yards.

As progress was made and improvements made, it was found possible to build diesel electric engines which would haul road trains, and there were two types of those developed. One for passenger trains and one

for freight trains.

Later they developed a type which could be used in either service, but they didn't do that all overnight. They didn't -- I don't know of any road the dieselized all at one fell swoop.

After the yard service, a road might decide to dieselize some of its through freight service, and what it did was to take a line of railroad between two terminals, where there was heavy traffic, and where they felt the greatest economies could be obtained from these diesel engines.

15,452 And then they made studies, of course, to determine what the economies were, and then they built enough diesel engines to handle that service and put them in and operated them; and then maybe the next year they would look around and expand it, and so on. But I don't know of any of them that made a complete change of operation and equipment in one short period, such as six months.

* * *

15,494 Q. Mr. Gordon, did you give any consideration to whether the base period 1949 - 1950 was an appropriate base period for use by Mr. Meyers in the conduct of his study?

A. Yes, I did.

Q. And what was your conclusion as a result of such consideration?

A. I thought that the matter deserved some investigation, because, after all, 1950 was a year during half of which the Korean War was in full blast. And for that reason I thought that that might have had some influence on the base that Mr. Meyers used.

So I thought that instead of using 1949-1950, that it might be better to use an average of 1948 and 1949, both of which years were free from any influence of the Korean War.

Q. Mr. Gordon, I am placing on an easel TEA's Exhibit 5047, which was developed during the cross-examination of Mr. Meyers. Have you had an opportunity to check the figures which are on that exhibit?

A. Yes, I have.

15,495 Q. Are they correct?

A. They are correct.

Q. Now do the figures which are on TEA's Exhibit 5047 give effect to the adjustment which would be appropriate in the event that you properly treated the extraordinary income credits?

A. No, they do not.

Q. Now in the event that you made the adjustment resulting from such change, what would be the constructive value, using 1948-1949 as the base period, as far as Riss & Company is concerned?

A. That would be minus .08 per cent.

Q. You mean the figure here would be minus .08 per cent?

A. That is right. And the figure up above, about the middle of the sheet, the first time it appears, "Riss Constructive Margin, 1959" --

Q. Yes.

A. -- .08 per cent.

Q. All right. What would that result in as the constructive value for Riss & Company as January 31, 1958?

A. That would give a constructive net income before taxes of minus $22,000. That would compare it with the $5,600. Since the constructive value is a minus quantity, I did not compute it.

* * *

15,500 Q. Mr. Gordon, have you formed an opinion as to the liquidating value of Riss & Company as of January 31st, 1958?

15,501 A. Well, yes.

Q. What is it?

A. The 1957 stockholders' report of Riss & Company showed that the management valued its routes at $250 per mile. Multiplying that by the 36,000 miles testified to by Mr. Riss gives a figure of $9,000,000. I see no reason not to accept this valuation of the management, because since that time sales of routes have been at substantially than the $250 a mile.

Q. In your opinion what was the minimum going concern value of

Riss & Company as of January 31, 1958?

A. Well on that basis it would be $9,000,000, which is the estimated liquidating value.

Q. Are you familiar with the term "contingent liability," as it applies to a corporate balance sheet?

A. Yes, sir.

Q. What is a contingent liability?

A. Well, it is a liability which is not definite but which may take place in the future. It might be in connection with claims for damages, claims for back taxes, claims in connection with the negotiation of a lease or an agreement -- any number of items of that kind.

Q. In valuing a corporation would you give consideration to its contingent liabilities?

15,502 A. Certainly I would.

Q. I want you to assume that you were evaluating a corporation the size of Riss & Company as it existed in 1953, with its gross operating revenues, earnings, assets and liabilities. Would the fact that it had contingent liabilities affect your valuation?

A. Certainly it would.

Q. In what regard?

A. Well, it would simply mean that in the future it would be possibly faced with the payment of substantial sums; and that would naturally reduce any value you put on it.

Q. Now if the contingent liability were $1,000,000, would that have as much effect on the value as if the contingent liability were two million or four million or six million?

A. Obviously not. The larger the figure, the more scrutiny you would have to give it, and the more weight you would have to give it in arriving at your final value.

Q. Now I want you to assume that in valuing Riss & Company as of January 31, 1958 the evaluator disregarded a contingent liability of one

million, two million, four million or six million; and that by reason of the existence of this contingent liability the certified public accountant for Riss & Company refused to certify the balance sheet for the year 1957. What, in your opinion, is the value of an appraisal which ignores those contingent liabilities?

15,503 A. Well, I don't think it is worth very much.

Q. Mr. Gordon, in appraising a company, when that appraisal is based only on net income and operating revenues, in your opinion is such an appraisal a valid appraisal?

A. May I hear that again? I am not sure I got all the terms.

Q. I say, in your opinion is an appraisal which is based only on operating revenues and net income before taxes, a valid appraisal?

A. Well, it depends upon what kind of an appraisal you are talking about. I assume you are talking about an appraisal of the commercial value based on earnings.

Q. That is correct.

A. And an appraisal of that kind has to go deeper than that.

Q. Mr. Gordon, you have been testifying now for two and a half days. You have introduced, or we have introduced through you, into this record something on the order of 49 or 50 exhibits, each of which has been identified. You have described in detail the investigation and the study which you have made of the question which was propounded to you by these defendants.

On the basis of this investigation and this study, and on these exhibits, have you formed an opinion as to whether Mr. Riss was justified

15,504 in concluding, on the basis of the data contained on Plaintiff's Exhibit 243-A, and the Form A reports of the six so-called competitive companies shown on that exhibit, that Riss & Company should have done as well in 1957 as it did in 1953?

A. I have.

Q. What is your opinion?

A. My opinion is that he was absolutely wrong in arriving at any such conclusion.

Q. Would you please state the basis for your conclusion that he was in error in arriving at such a conclusion.

A. Well, in the first place, 1953 was not a proper year for Riss & Company, nor for two of the competitors.

In the second place, Riss was not comparable to any one of the six competitors in the base year.

Three, 1957 was not a proper terminal year. In the first part of it, from the period of 1953 to 1957, Riss was not comparable to the six competitors. In the second place, General Expressways was not the same company in 1957 and 1953. Furthermore, other companies in the competitive group were involved in mergers and acquisitions.

Finally and most important, Riss itself was completely dissimilar to any other company in the industry up to that point. Beginning in October 1956 Riss primarily operated by having trains haul 62 per cent of the business,
15,505 instead of hauling it on the highways. And this made it in 1957 an entirely different company from what it had been in the earlier years.

* * *

15,531 Q. That is what we are speaking about here.

Now, another thing that you would want to know, again, just as a matter of common sense, is what was happening to competitors of the complaining company during the period of the alleged illegal conduct; isn't it?

A. No. I don't see that you would need to know that.

Q. You wouldn't have any interest in that?

A. Not necessarily. The main thing that I would have interest in is the amount of traffic that Riss & Company lost because of the alleged claims.

Q. Well, if you wanted to measure the impact, let's say, of allegedly illegal conduct that was specifically aimed at haulers of ammunition and explosives for the United States Government, one way would be to compare what a hauler of munitions, such as Riss, was doing during that period, with what was happening to truckers operating in the same areas during the same time on approximately the same scale who were not principal haulers of munitions; isn't that so?

A. I confess I don't understand the question.

Q. Let's assume that you are trying to get some assistance
15,532 in solving the problem of what the extent of the injury sustained by a munitions trucker was from conduct directed at injuring munitions truckers.

A. May I ask what year you are referring to now?

Q. I am referring to this entire period when the illegal conduct occurred, 1951 through 1956. One thing you would do would be to look, would you not, at what was happening to the competitors of the company who were engaged in a similar business in a similar area except for the conduct of the special business which was under attack?

MR. SHEA: Now, if the Court please, it seems to me that Mr. Wright is just arguing with this witness. The witness has told him that this isn't what he would do; and also, so far as the matter of law is concerned, unless comparability be established -- and there is grave doubt as to whether comparability can be established in manufacturing industries or in transportation industries, as distinguished from movie cases -- there is great doubt that this has, as a matter of law, any validity, and he is framing a hypothetical question on an assumption of law.

THE COURT: All right. I will overrule the objection. If he can answer, he may answer.

THE WITNESS: May I have the question read, please?

THE COURT: Repeat the question, please. How about the Soundscriber. Let's see how that works this morning. Try the thing out.
15,533 (Whereupon the Soundscriber was played back.)

THE COURT: Now, do you understand the question?

THE WITNESS: I think I do.

THE COURT: All right.

THE WITNESS: In my opinion, there were no companies that were comparable to Riss & Company. Riss & Company, according to the record as I understand it, was the largest munitions carrier in the country. I don't know just what companies you have in mind that should be compared.

BY MR. WRIGHT:

Q. I have in mind those that are up on the board there; that is, Plaintiff's 243-A.

A. Yes, I have those companies in mind, too, but I didn't have them in mind in connection with your question, because Mr. Riss testified that none of those companies handled munitions to any extent.

Q. I suggest to you that is why they were selected for comparative purposes, and companies of that character would have to be selected if you were going to make a comparison that would be of any value for this particular purpose, to try and get some measure of the impact of this attack on the munitions carriers on Riss & Company.

* * *

CROSS EXAMINATION OF MR. GORDON

BY MR. WRIGHT:

* * *

15,540 Q. Now, if you wanted to determine what the impact of these rate reductions in '55 and '56 had been on Riss & Company, as distinguished from carriers who were not engaged in the carriage of explosives in a particular way, you would necessarily compare Riss with carriers such as those on the board there; wouldn't you?

A. I don't see that at all, Mr. Wright. You are talking about carriers that aren't handling explosives and you are talking about Riss that does. Why not compare Riss& Company with some of these other companies that did carry explosives? For example, Watson Brothers and Hayes.

Q. Are you aware of what happened to Hayes? A. Yes.

Q. Did you undertake to make comparisons showing the effect of these rate reductions during this period with other explosives carriers?

A. No, sir.

Q. You had all the Blue Book material there available; didn't you?

15,541 A. I wasn't asked to make any such investigation.

Q. Were you told about Baggett? Baggett was also a carrier, a contract carrier of explosives, which is the subject of some of the evidence in this case.

A. I know that Baggett was not a common carrier of explosives. As I undertand it, they were a contract carrier.

Q. Of ammunition and explosives.

A. Yes, among other commodities.

Q. Did you take a look at those TRINC Blue Books to see what happened to Baggett?

MR. GATES: Just a minute, if the Court please. I think this is entirely improper cross examination, completely outside of the scope of the direct. There was no mention whatsoever made of Baggett or Hayes or Watson, and Mr. Wright is now going far afield.

If we are going to try those cases, those carriers, and what happened to them, we certainly won't be out of here by Christmas.

THE COURT: As I understand, the witness has only made a survey or examination and testified regarding these six companies. You didn't go outside of these six companies.

MR. GATES: That is correct, Your Honor.

15,542 THE COURT: Is that correct?

THE WITNESS: That is correct.

THE COURT: He stated that on direct.

BY MR. WRIGHT:

Q. Well, let me ask you this question, Mr. Gordon.

Assuming that the Plaintiff's claim with respect to this defamatory publicity that occurred during the period from the fall of 1951 through the summer of 1954, is that it had its primary impact on its commercial traffic. If you want to test the validity of that assumption, you would look, wouldn't you, at what was happening to the commercial traffic of other truckers in the same territory during the same period of time? Would you not?

A. If they were comparable truckers.

Q. Well now, we don't have the '51-'52 figures on the board there, but you have them, don't you, for Riss and the six companies?

A. Yes.

Q. And they were all primarily commercial carriers. Can you read us those figures from your tables there for those years?

A. What figures do you mean?

Q. Talking about Transamerican, Cooper-Jarrett, Eastern Express, General Expressways, Yellow Transit and Denver Chicago gross revenues for the years '50, '51 and '52.

15,543 A. These figures are the total operating revenues --

Q. Yes.

A. --of each of these companies for the years 1950, 1951 and 1952.

Q. In order that we will have a complete comparison, suppose you first just read Transamerican for those four years starting with 1949.

A. $8,553,000; $11,824,000 -

MR. GATES: Your Honor, I think it might be helpful if Mr. Wright indicated or asked Mr. Gordon to indicate from which of the exhibits he is reading.

THE COURT: Yes, I think you may state which exhibit you are reading from for the record.

MR. WRIGHT: Yes.

BY MR. WRIGHT:

Q. If you will, please just give us the number.

A. TEA Exhibit No. 5067.

Q. Then if you will start again, please, so we will get the sequence, will you read the per year first and then the figures.

A. All right. Transamerican Freight Lines, Inc., 1949, $8,553,000; 1950, $11,824,000; 1951, $13,991,000; 1952, $17,470,000.

Q. Now, the rest of the figures are on-

THE COURT: He is talking about gross operating revenue now?

15,544 THE WITNESS: Yes, sir.

THE COURT: And the rest starts in 1953. All right.

BY MR. WRIGHT:

Q. Now, during that period 1951 through 1954 when Riss's commercial revenues were going down, Transamerican's were steadily going up, weren't they?

A. Well, Riss's operating revenues were not going down in that period.

Q. I was referring to its commercial traffic.

A. Well, its commercial traffic actually increased in 1950 and 1951.

Q. It increased in 1950 about the same way the others increased, didn't it? 1950 over 1949?

A. Approximately, yes.

Q. Then the increase began to slow down in 1951, didn't it?

A. Yes, that was coincident with Riss's concentration on the explosives and ammunition business which started to go up about that time.

Q. And then it started to fall off in 1952, while Transamerican was going up pretty substantially, didn't it?

A. Yes, and on the other hand, Riss & Company were going into the explosives and ammunition business in a big way; in my opinion, they were doing that to the neglect of the commercial business.

Q. And in 1953, the Transamerican business continued to rise,
15,545 while Riss's commercial business fell off, didn't it?

A. That is right; for the same reason as I have just given.

Q. Then in 1954, Transamerican went from what -- well, 1954 is on the board there, those figures are all -- there was a slight fall off in Transamerican and a substantial fall off in Riss & Company?

A. Yes. 1954, as I testified, was the year following the Korean War and all of the companies or nearly all of the companies had reductions. Riss & Company, because it was concentrating on a wartime commodity, had a very large reduction in its business in 1954 and a much smaller reduction in its commercial revenues.

Q. Well, now, let me understand you correctly. Are you expressing any opinion on the question of whether or not the effect of that three-year campaign was to help or hinder Riss & Company in replacing that explosives traffic it lost in 1954 with commercial traffic?

MR. GATES: Your Honor, I am going to object to the form of that question. If Mr. Wright wants to state that question as a hypothetical question, then I will withdraw the objection.

THE COURT: Well, I think maybe he may answer, if you put it in the form of a hypothetical question.

BY MR. WRIGHT:

Q. Well, assuming, Mr. Gordon, that Riss' claim is that when the Korean War ended, it was unable to replace the lost munitions traffic
15,546 with commercial traffic because of this campaign which was then

going on, you see anything in these figures for Transamerican and Riss & Company, these gross figures, that would contradict that claim?

A. I am limited to looking at those figures?

Q. Well, those are the figures you would have to look at, aren't they, if you were going to talk or think in terms of the impact of activity of that kind on somebody's business?

A. No, you would have to go behind the figures to answer a question like that, Mr. Wright.

Q. Well, let me put it this way: Do you think that the effect of a publicity campaign that was intended to injure a company would be reflected in such things as the amount of investment for a mile of line operated?

A. I don't see any particular connection.

Q. Well, there isn't any, is there?

A. I can't see any.

Q. The impact, if any, would be on the gross revenues of the business?

A. With the emphasis on the "if any," yes.

Q. Yes. Whatever it was, it was on the gross?

A. As I said before, I have seen no evidence in this case that there was any decrease in business caused by the acts of the defendants.

15,547 Q. Well, at least half of these exhibits you have prepared and spent a couple days talking about, really don't have any relation at all to this particular problem, do they?

MR. GATES: Just a minute, please. The Court please, I submit that these questions are getting extremely argumentative.

THE COURT: Well, now, Mr. Gates, you know, as an experienced lawyer, on cross-examination counsel on both sides are permitted to put leading questions to a witness.

MR. GATES: I have no objection to leading questions, it is the form of the question I object to, Your Honor, and I submit that that is extremely argumentative.

THE COURT: Well, suppose the witness said, "Yes, I do know that" or "No, I don't know it," it is a question for the jury. All right. I don't know what he is going to say. All right.

MR. GATES: I don't, either.

MR. SHEA: I wonder if the witness wants the question read back?

THE COURT: Read the question back. Do you understand the question, Mr. Gordon?

THE WITNESS: No.

THE COURT: All right, read the question back.

(The question was read.)

THE WITNESS: Well, Mr. Wright, if I may answer that in my own way, I just can't answer it Yes or No.

15,548 THE COURT: You answer it in your own way, Mr. Gordon, give any explanation you want.

THE WITNESS: These exhibits were prepared for the sole purpose of showing what comparisons could be made or contrasts with these companies that Mr. Riss selected for the purpose of his testimony. Now, he said that if Riss & Company had kept pace with these companies, that they should have earned as much in 1957 as they did in 1953; and all I have done was to go further than the operating revenues and the net revenues -- net operating revenues that Mr. Riss used, to show that the companies are dissimilar in a great many ways.

BY MR. WRIGHT:

Q. Let me put this question to you: Assuming that you wish to compare during this period of time the gross business of trucking companies operating in Riss's area, what, if any, companies would you substitute for any of those on the board as more comparable to Riss & Company than any of those that are up there?

A. I haven't made any study to determine that. I wasn't asked to find companies that were comparable to Riss. I was asked to make a comparison of Riss & Company with these companies to see whether or not they were

truly comparable or whether they were so dissimilar as to nullify the effect of any proposed comparisons.

Q. So that so far as you know, for the purpose of this case, those
15,549 six companies that are up there, are the best companies that could have been selected for comparative purposes?

A. I didn't say anything like that at all, Mr. Wright. I said I didn't know.

Q. I say on the basis of your studies, you can't give us anything better?

A. I can't give you anything better and I can't give you anything worse; I don't know.

* * *

15,552 Q. Well, my point is, Mr. Gordon, I suppose all managements make mistakes, don't they?

A. Good management makes very few.

Q. Yes, but they all make some, I suppose?

A. Well, to err is human.

Q. The question I was putting to you was: What kind of data and information and experience you have to have, to get on the witness stand five or ten years later, and say that one was a mistake of judgment? You certainly wouldn't do that, would you, or you wouldn't be able to make a judgment that was worth anything simply on the basis of the fact that some users of the service had complained about the carrier's decision to stop rendering it?

A. Well, I think that factor alone wouldn't be sufficient, no. I think
15,553 you would have to have other factors.

Q. It would really be almost irrelevant, wouldn't it? The management, I suppose --

THE COURT: Wait a minute, let's find out what Mr. Shea wants.

MR. SHEA: The Court please, it seems to me the questions ought to be clarified. Is Mr. Wright talking about the closing down of terminals by Riss & Company?

THE COURT: Let me state this to the witness. Mr. Gordon, if you don't understand the question; of course, you have a right to tell the Court you don't understand the question and I will have counsel either repeat it again or reframe the question. Do you understand that question?

THE WITNESS: Well, I thought he was talking just about the complaints of shippers about the service.

BY MR. WRIGHT:

Q. When any carrier discontinues a service, people who are deprived of the service are inclined to complain about it, are they not?

A. I would think that would be natural.

Q. Perfectly normal, isn't it, that is a normal consequence of the decision, I suppose; it is a fact, isn't it, that the management, whenever they decide to discontinue a service, knows that it is going to make somebody who has been using it unhappy?

15,554 A. I think that is certainly one consequence of the decision.

* * *

DIRECT EXAMINATION OF MR. FIELD

BY MR. BALL:

* * *

15,572 A. My name is Robert E. Field. I am a Certified Public Accountant. I am a partner of the firm of Price, Waterhouse & Company.

Q. What is your business address with that firm, Mr. Field?

A. 56 Pine Street, New York City.

Q. Will you describe briefly what Price, Waterhouse is?

A. Price, Waterhouse is a firm of independent Certified Public Accountants, with some fifty offices in the United States and the Caribbean area, as well as associated firms abroad.

Q. What sort of services does Price, Waterhouse offer to its clients?

A. Basically they are auditing and accounting services, but as an adjunct to those we also offer tax advice in the accounting field, and management advisory services.

Q. Does your firm serve any clients who are common carriers?

A. Yes, it does. We have more than a dozen common carriers, both in the motor-trucking field and in the railroad field, as well as airlines and steamships.

Q. Will you tell the Court and the jury something about your educational background?

15,573 A. I was graduated, Bachelor of Arts degree, from Dartmouth College in December of 1942. After three and a half years as a line officer in the Navy, I returned to Dartmouth and received a Master of Business Administration degree from the Amos Tuck School in 1947.

Q. That is the School of Business Administration; is that right?

A. That's right, Mr. Ball.

Q. Are you a Certified Public Accountant?

A. Yes, in two States, New York and Michigan.

Q. After you graduated from the Amos Tuck School of Business Administration, by whom were you then employed?

A. By Price, Waterhouse, in New York.

Q. You have been with Price, Waterhouse at all times since your graduation from Amos Tuck?

A. Yes, since 1947.

Q. Have you been attached to the New York staff all that time?

A. With two brief exceptions; I spent six months in our London firm and four months in our Los Angeles office in 1952.

Q. Are you a member of any professional organizations?

A. Yes. I am a member of the American Institute of Certified Public Accountants, the New York State Society of Certified Public Account-

15,574 ants, and the American Accounting Association.

Q. In addition to being a partner in your firm, do you hold any special responsibilities inside the firm organization?

A. I am a member of our firm's Special Responsibility Committees on both public utilities and petroleum products.

Q. What do you mean by Special Responsibilities Committee?

A. In our firm we have a few departments charged with maintaining an intimate knowledge of certain fields and they are responsible for keeping all other offices advised of matters pertaining to their clients in the fields of their specialties.

Q. Do you consider common carriers as one form of public utility?

A. Yes, it's a form of public utility, considered in a rather special category, however.

Q. During the 13 years you have been with Price, Waterhouse, what has been the type of work that you have done and the experience that you have acquired?

A. My work has been all on the audit staff. I have made or supervised the examinationsof a great many financial statements and a great many different industries, and for many purposes.

15,575 I have also participated in the Second Hoover Survey of the Executive Branch of the United States Government.

Q. What were the particular assignments you had with the Second Hoover Commission?

A. Well, our firm provided the task force which surveyed the lending and the guarantee functions of the government. And my particular assignments as a member of that task force were the World Electrification Administration, the Housing and Home Finance Administration, and the Export-Import Bank.

Q. Have you ever participated in or supervised any audits or investigations that have been made for the purpose of evaluating a business, or corporations?

A. Yes, I have.

Q. What have been the circumstances under which those audits or investigations have been made?

A. They have been circumstances dealing with the allocations of acquisition costs to the various parts of the business acquired, or with

determinations of acquisition costs. They have also included work in connection with establishing a rate base for regulatory purposes, which is a special form of valuation, and several dozen assignments in connection with registration statements for the sale of securities to the public.

15,576 Q. Have you ever made any investigations in connection with an attempt to evaluate a corporation or a business for a prospective purchaser?

A. Yes. I think that the Securities & Exchange Commission work is the best example of that, and I have also had other assignments in that same general field.

Q. Now, Mr. Field, in this case we are dealing with the common carrier business of a trucking company. Are there any differences in basic accounting practices or principles applied to the trucking industry, say as distinguished from some of the other industries you have worked with?

A. Well, yes, there are practices that are peculiar to the trucking industry but I don't think that those are pertinent to this case. I think that this case, the accounting end of it, at least, hinges on something more basic than the accounting practices in any one industry.

* * *

15,577 Q. Have you, Mr. Field, been asked to undertake an assignment from the defendants in this case to make an investigation of the books and records of Riss & Company?

A. I was asked by the defendant railroads in this case to review the financial statements submitted by Mr. Riss, namely, the balance sheets of Riss & Company of December 31, 1953 and 1957, and the operating statements for the five years ended at 1957, all as reported to the Interstate Commerce Commission on Form A.

Q. And what were you asked to do with respect to those statements, Mr. Field?

A. I was asked to make such investigation and review of the books and records of the company as I considered necessary in order to give me a proper basis for expressing an opinion as to whether these financial statements

presented either the value of the carrier operation or the financial position and results of operations.

Q. I am putting up here on the easel two Plaintiff's exhibits:

The first is Plaintiff's Exhibit 243-A, which contains certain infor-
15,578 mation, the gross operating revenues, the net operating revenues, and the net income before income taxes, of Riss & Company, for the years '49 through '57.

And the other is Plaintiff's Exhibit 236, which is a copy of a balance sheet of December 31, 1953, which contains a computation on it of net worth as shown by that balance sheet as of December 31, 1953, and also has a figure on it of net worth of Riss & Company in 1957. It contains a figure which I understand should be a red figure.

Is that correct, Mr. Layne?

MR. LAYNE: That's correct. That was a deficit.

BY MR. BALL:

Q. Now, your attention was called, was it not, to those exhibits?

A. It was, Mr. Ball.

Q. And those are among the financial statements that you were asked to check against the books and records of the corporation? A. Yes.

Q. Now, in the work that you have done, were there any basic accounting concepts that you sought to apply?

A. There are two basic concepts involved in this matter, and I should like to make them very clear to the jury because they are essential to a proper understanding of the testimony that is going to follow:

15,579 The first concept is that financial statements are not prepared for the purpose of showing value. They do not pretend to do so, and they cannot be taken to be an expression of value of an enterprise.

The second concept is that in order to determine the financial position and the results of operations of an economic entity you must have the operations of all the parts that go together to make up that entity.

Q. The phrase you used, if I understood it, is "an economic entity"?

A. Yes, Mr. Ball.

Q. Before we go ahead with more discussion of that concept, I notice that you have described yourself -- and I have asked you about the fact that you are -- a Certified Public Accountant, and described your firm as a firm of Certified Public Accountants.

Will you tell the jury just what it is that Certified Public Accountants do?

A. I shall be glad to:

They examine, as we call it, or audit, as most people call it, financial statements prepared for many different purposes.

Q. Well, now,that would be financial statements of what kind of organizations, Mr. Field?

15,580 A. Almost any kind of organization you can think of which can express its operations in terms of accounting data.

Q. Now, if you go into business and the bookkeeper in the business has recorded every transaction that takes place in that business, the books and records wouldn't need an audit, would they?

A. If they didn't, we would be out of business. Actually they do.

There is a popular misconception that accounting is nothing but bookkeeping, and without detracting from bookkeeping, I would like to differentiate between the two for a moment, if I may:

Bookkeeping is the recording of a transaction in accordance with certain procedures laid down by a company, but in order to lay down these procedures and in order to determine how a transaction fits within these procedures, it's necessary for someone to analyze the operation or the circumstances which give rise to the transaction, and to, by exercise of his judgment, choose the best method of accounting available, and so instruct the bookkeeper to make the entry..

Accounting, then, is really an art. It is not a science, it is not an application of a rigid set of rules. We have to use judgment, and that is why we call it art.

15,581 Q. Now, to an accountant, is there more than one different way of recording the same transaction on the books of a company?

A. Yes, there are oftentimes several different ways a transaction may be recorded, and the results of one alternative or the other may vary quite a bit.

Q. Would there be certain circumstances when one mode would be more appropriate than another in the choice to be made?

A. That might very well be, Mr. Ball.

Q. What would determine what mode would be the more appropriate?

A. Usually the purpose of the financial statement.

Q. In other words, you mean to say that financial statements have more than one purpose under different situations?

A. Yes, they do. Unfortunately, we have not been able to devise a financial statement that will suit all purposes.

Q. Well, what are some of the different purposes that a financial statement serves?

A. Well, the usual financial statement which most people are familiar with is one that reports on the results of operations of a going concern. This is the type of financial statement that you will find in annual reports to stockholders.

15,582 Another type of financial statement is that found in prospectuses for the sale of securities to the general public.

And still another type of financial statement, and rather more specialized, might be a statement of affairs of a corporation which is undergoing proceedings in bankruptcy, or liquidation.

Q. Are there any instances where the fact that the business is a regulated business has something to do with the form of statements?

A. Yes, that's true. There are occasions where accounting practices prescribed by regulatory agencies differ from those prescribed -- not prescribed, but deemed to be generally accepted by the accounting profession.

In this case we may find a company reporting to its regulatory agency on one basis and reporting to its stockholders on another basis.

Q. Now, Mr. Field, when you make an audit or investigation of the books of a company or business, do you confine yourself to looking at the books of the company?

A. No, we do not. We would be just figure-checkers in that case.

Q. Well, what are the things that you do, Mr. Field, in addition to looking at and checking the figures?

15,583 A. The first thing we do in making an audit is to make sure we understand the operations of the entity and the manner in which it carries on its business. That is essential because accounting is only an interpretation of operations.

Q. Do you talk to the members of the management and the employees to ascertain those facts?

A. Yes, we do. Figures by themselves are sterile. We must know the -- we must appraise the judgment of the people whose actions result in those figures and we must oftentimes obtain explanations from these people that do not appear in records.

Q. Then, you mean to say that as a Certified Public Accountant or as an auditor you concern yourself with matters that are not recorded in the books of a company?

A. We necessarily have to, Mr. Ball.

Q. I have seen on financial statements sometimes, Mr. Field, what are called footnotes:

Are the matters that are set forth in footnotes matters with which you are concerned as a Certified Public Accountant?

A. Very much so. They are an integral part of the financial statements and are covered by our certificate or opinion.

Q. Your opinion applies to them just as much as it does to the figures

15,584 then; is that right? A. Yes, it does.

Q. Well, what are the nature of some of the footnotes that are required to be made in accordance with accounting concepts?

A. Basically, footnotes are designed to present information which ought to be considered in order to properly interpret the financial statements themselves, but they will deal with matters which cannot be expressed in figures in some instances. Therefore, you cannot reflect them directly in the financial statements but can only call attention to them through this medium of the footnote.

Some of these notes will deal with -- will be only explanatory, for example, describing the accounting practices employed by the company in the manner in which it carries its inventories on the books, or records goodwill, and the amortization of it, and so forth.

Other notes are a bit more significant insofar as they concern financial position.

These notes might cover contingent liabilities, such as litigations and tax deficiency claims. They might also deal with commitments of the corporation.

Q. These are matters, I take it, that the accountant believes should be made or disclosed to the public?

15,585 A. That's right, in order not to have the financial statements mislead.

Q. What do you mean -- you mentioned a contingent liability. Will you describe that a little bit more to the jury?

A. I think I mentioned that a contingent liability could be a litigation of one type or another, or a tax deficiency asserted by the Internal Revenue Service.

In general, a contingent liability is a possible loss to the corporation which is not yet properly reflected on the balance sheet because either you can't determine the amount of it, or the event which will fix the liability has not yet occurred.

Q. Then does that mean there is no way to express that contingent

liability in figures? Is that correct?

A. In some cases you can express a figure; you can point out, for example, in the case of a litigation, the maximum amount for which the company is being sued, and in other cases you just don't have those figures available.

Q. Why is it that you feel it is necessary to require disclosure of contingent liabilities?

A. Well, if I am trying to obtain an idea of the financial position of a company, I must concern myself not only with the recorded net worth but with a possible adverse effect on that net worth from an event which is in the
15,586 process of happening, although has not yet occurred.

Q. You mentioned also commitments that you said should be disclosed:

What is a 'commitment' in the way in which you have used the term?

A. A commitment is an undertaking to perform. Usually you will find these commitment notes in connection with pension plans where perhaps the past service benefit has not been completely refunded by the corporation, or long-term rentals for leases of property.

Q. This is a commitment -- in other words, it is something that a corporation or a business is obligated to do but can't be expressed as an immediate dollar figure in the balance sheet; is that correct?

A. It could be expressed as a figure in the balance sheet but there is a question as to whether or not it should be properly expressed in the balance sheet at that time, because it may affect future operations rather than present operations. There is some matter of doubt on some of those items at some time.

Q. What is the fact as to whether or not footnotes are used to disclose the occurrence during a year which is being reported, of unusual transactions, or matters of a similar nature that will affect the business?

15,587 A. It is quite common to find a very unusual occurrence during the year which has affected the financial statements being described rather

fully in the notes to the financial statements.

Q. Would you give an illustration of what you might mean by an 'unusual occurrence' during a year?

A. Well, an unusual occurrence might be a physical catastrophe which occurred, disrupting the company's manufacturing facilities, or it might be the results of a labor -- the effect of a labor strike. It might be the loss or the gain of a very important source of revenue.

Q. Would such matters as a marked change in competitive situations or in the nature of the business be required to be stated in a footnote?

A. In the ordinary financial statement it would probably not be in a footnote but it would be reported in the President's letter to the stockholders. However, when we come to registration statements, this is the type of information that is required to be set forth in conjunction with a summary of earnings.

Q. Now, I am interested -- you just mentioned financial statements that are prepared for use in connection with the sale of securities, prospectuses and registration statements approved by the Securities & Exchange Commission.

Now, are there standard rules and principles established by the

15, 588 Securities & Exchange Commission as to what has to be disclosed?

A. Yes. They have certain rules and regulations as to form and content of financial statements for purposes -- not only financial statements but actually everything that goes into a prospectus for the sale of securities.

Q. They require disclosure of facts other than just the mere figures, then?

A. Yes, they do.

Q. Well, describe something of the sort of information that the Securities & Exchange Commission requires to be put in a prospectus to advise the possible purchaser of securities about the affairs of the corporation.

A. A prospectus is designed to tell a person all that it can tell about a company and its affairs. It will go into the history of the company, it will describe what that company does, its sources of supply, its major customers. It will set forth the current situation with respect to its labor contracts, its personnel relationships. It will go into such matters as any patents or

franchise rights under which the company is entitled to operate.

And, in general, what it is designed to do is to give a prospective investor all the information that he need know in order to make an informed
15,589 decision as to whether or not to purchase the security being offered.

Q. Well, can we say properly that that helps him to evaluate the security or the share of the business which he might consider buying?

A. That's the purpose of it.

Q. Now, as a Certified Public Accountant, are you responsible for these narrative or descriptive portions of registration statements and prospectuses?

A. No, we are not responsible for them.

Q. Well, do you participate in their preparation?

A. Yes, we do. We have a dual interest in the narrative portion of the prospectus. First of all, there is very often information in there which has some significance in relation to the financial statements, in which case we might very well cross reference from the financial statement captions to the narrative text.

In other places there is narration on subjects of which we have considerable knowledge and we read these sections, and as a matter of good client relationship, and try to suggest to the client better ways of saying things in making the document more effective in general.

Q. What is the fact as to whether or not you certified public accountants require that matters that you regard as significant be included in these narrative portions?

15,590 A. If they are matters significant to an evaluation of financial statements, and if there are matters which have a serious implication to other parts of the prospectus, then it is obviously necessary for us to see that these matters are properly disclosed, either in the notes to financial statements, or in the narrative.

Q. Well, Mr. Field, in the course of your audit or investigation of a business, if you acquired information about certain facts which you

regard as significant, but you notice that such facts are not being disclosed in the narrative portion of the prospectus, what would be your position?

A. Well, our position would be a difficult one. In the first place, we would try to convince our client that it was in his best interest to make a complete disclosure. But failing this we would have to withdraw from the engagement.

Q. You simply wouldn't, I take it, then, certify books and records if the significant facts were not disclosed?

A. We could not do so.

Q. Well, would that same situation apply to you as a certified public accountant if I called you to the stand to ask you to present figure tabulations that you thought would be meaningless without explanation?

15,591 A. Yes, it would.

Q. At whose request did you make this investigation?

A. The defendant railroads in the proceedings.

Q. Now, was your investigation, Mr. Field, an audit in the usual sense of the word, where an audit is customarily made for the purpose of an annual report to stockholders?

A. No, it was not. Our investigation was not made in accordance with generally-accepted auditing standards and procedures. It consisted, rather, of a review of financial statements and recorded transactions, discussions with employees and officers of the company, and such examination of supporting data as we considered necessary for the purpose. But it should not be construed as having been an audit.

Q. However, did you make a somewhat extensive investigation?

A. A very extensive investigation.

Q. Now, a little earlier you spoke about gathering data for the evaluation of a business:

What do you mean when you speak of the 'value' in that sense?

A. Well, I think the value of a business is what you can get for it in the marketplace between a willing buyer and a willing seller.

15,592 Q. Well, is there such a thing as liquidation value?

A. Yes, there is. Sometimes you find values referred to as liquidation values, or, on the other hand, going-concern values.

Q. Would going concern values and liquidation values necessarily be the same?

A. They would undoubtedly not be the same.

Q. And would either of these values be represented by the net worth figures shown on an ordinary balance sheet?

A. No.

Q. Would either of these values in your opinion be capable of estimation on the basis of the ordinary financial statements of a business?

A. No.

Q. Now, why do you say "no" to these last two questions, Mr. Field?

A. Well, because the ordinary financial statements, as I stated before, are not prepared to show value. They do not pretend to do so. They are prepared on a cost basis. For example, the property accounts included in the ordinary financial statements are carried at historical cost less depreciation.

Now, on an asset of long life, such as properties, at any time a reasonable number of years after the acquisition of those properties it is not to be expected that the market value of those properties would be necessarily
15,593 the same as the depreciated cost. This might occur because of an error in estimation of service life, or it might be a change in price level or a real increase in value.

Also, in determining value, a prospective purchaser must consider not only the financial statements which, after all, indicate only historically what has been done on a cost basis, but he must take into consideration many other factors that you can't take directly from the balance sheets, and these are such things as goodwill, the contingent liabilities we talked about before, the commitments of the corporation, the personnel, the ability of the

personnel, and whether they have satisfactory relations with labor.

THE COURT: Excuse me, Mr. Ball. I didn't want to interrupt the witness but he just mentioned something, and I wish you would try to develop how you determine good will, the value of good will; I mean, as you go along.

MR. BALL: Well, why doesn't the witness give you his opinion right now?

THE COURT: All right.

MR. BALL: Mr. Field, would you like to do that?

THE COURT: Maybe it has been explained before, I don't know.

15,594 MR. BALL: No, it hasn't.

THE WITNESS: No, the point has not been made.

It is actually a very difficult question.

I would say that good will, in general, represents the capitalized value of the earnings which one company makes in excess of those which other companies engaged in the same line of endeavor realize on their capital.

In other words, this is an increment over and above the normal return on that employment of capital.

THE COURT: In these balance sheets or financial statements, is anything usually asserted to show what the good will of the business is, or was?

THE WITNESS: Not ordinarily. In a going concern balance sheet, you will probably not find a good will figure.

Good will will arise on the balance sheet of the corporation where it has been paid for. In other words, you don't set it up on the balance sheet. You can't write it up.

When you buy a corporation and you pay more than the net worth of it as shown by its historical cost records, then that excess amount will very frequently be set up on the books of the purchasing corporation as good will,

15,595 and probably amortized over some future period of years.

THE COURT: All right.

BY MR. BALL:

Q. What is the fact, though, as to whether or not the accounting

profession encourages or discourages the carrying of good will as an asset on the books and records of the corporation?

A. That's a moot question, Mr. Ball. There are some very decided opinions in the accounting profession as to whether or not good will should be carried. Many people consider it something that should be written off immediately and other people consider it a perfectly good asset that should be carried until such time as its extinguishment of value can be determined.

Q. Is there such a thing as what might be called intangible assets that accountants have to take into account?

A. Yes, and these should be taken into account by a prospective purchaser too.

Q. Are they ordinarily reflected on the balance sheet?

A. Sometimes they can be reflected on the balance sheet. An intangible asset is something without physical substance or form to it. It would be -- when we think of intangibles the thing that comes most readily to mind is some-
15,596 thing like a patent or a copyright, or perhaps a new product we develop in which we spent a great deal of research in development monies, in which case we might set those up in a balance sheet as a deferred charge which we would call intangible.

Q. Now, take, specifically, Riss & Company. Is there any example of an intangible asset that you noticed in connection with your examination of the books and records of Riss & Company?

A. I don't recall any significant intangible assets on the balance sheet but they have intangible assets which are referred to in the notes to the financial statements on their annual audit reports.

Q. What are those?

A. 36,000 miles of operating rights which are expressed in the notes to be worth several million dollars.

Q. In other words, the auditor, the regular auditors of Riss & Company have in their footnotes to the balance sheet made reference to these operating rights as an asset?

A. Not exactly. They are not the auditors' references. The footnotes in the financial statements are representations of the persons who prepare them, or the company officials. The auditors merely examine these financial statements and express an opinion as to whether or not they seem reasonable.

15,597 Q. Now, those particular notes, however, do not appear in the reports to the Interstate Commerce Commission?

A. No, they do not.

Q. But they are on the annual reports of the corporation, of Riss & Company itself?

A. Yes, Mr. Ball.

Q. Well, we have been talking about financial statements. Aren't financial statements used, or ordinary financial statements, at least, used, in determining what a company is worth as a going concern?

A. Well, a prospective purchaser would certainly want to look at the financial statements, because they are the best record of what the business, as then constituted, has done in the past.

Q. Well, does he need to go behind the ordinary financial statements to determine that?

A. Yes, and that's the reason for the Securities & Exchange laws which establish the form and content of prospectuses for the sale of securities.

Q. In any event would a prospective buyer to your knowledge of their practices, confine himself to the operating statements for a single year?

15,598 A. No. That would be unrealistic and, if I could refer once more to the prospectus for the sale of securities, you will see that a prospectus contains what is called a summary of earnings which is a five-year picture of operations.

Q. Now, the plaintiff has submitted in this case, in connection with the testimony of Mr. Riss, a balance sheet -- well, he has submitted his I. C. C. reports for the years 1953 through 1957 --

* * *

15,598 Q. He has submitted the I. C. C. reports from 1949 through 1957. You have examined those reports, have you not, Mr. Field?

A. Well, not examined in the sense that we use the word, because that means an audit made in accordance with generally accepted auditing standards, but we have reviewed those, yes.

Q. At least, you have familiarized yourself with the contents of

15,599 those reports?

A. Yes.

Q. Now, the plaintiff has put on -- in connection with the testimony of Mr. Riss -- his Exhibit 236, which contains the 1953 balance sheet, a net worth drawn from that, and the net worth figure drawn from the balance sheet of December 31, 1957.

And he has also put from these statements certain operating statements to which we have called attention.

What is your opinion, Mr. Field, as to the pertinency or sufficiency of these type of financial data to a determination of the value of the common carrier operations of Riss & Company on either December 31, 1953 or December 31, 1957?

A. In my opinion, taken by themselves, these financial statements are entitled to very little weight in such a determination.

Q. Looking here to the fact that the figures ran from '53 to '57, and to a comparison appearing on 236 of net worth, December 31, 1953, and net worth December 31, 1957, what in your opinion is the pertinency or sufficiency of this type of financial data to determine whether or not a decrease in the value of the common carrier business of Riss & Company occurred between these dates?

15,600 A. It is not sufficient.

Q. Now, what is the basis of the opinion you have just expressed?

A. The basis of the opinion is, as previously stated, that these financial statements which have been prepared for purposes of annual report to the I. C. C., do not pretend to represent value; and also that these finan-

cial statements do not include all the operations which go together to make up the carrier operating enterprise.

Q. You say they don't go to make up all of the operations concerned in the common carrier enterprise. Well, do they represent the financial position or the results of the operations of that enterprise?

A. No, they do not.

Q. Incidentally, under whose supervision was this investigation of Riss & Company's books and records made?

A. Under my supervision.

Q. Will you describe in general what books and records you examined in connection with this investigation?

A. On Riss & Company, Inc., we had available to us the reports to I. C. C. and the annual audit reports, the federal income tax returns, the books of account, and the other corporate records.

Q. Did you, in connection with the income tax returns, also examine

15,601 any income tax audit reports by the Bureau of Internal Revenue?

A. Those are called Revenue Agents' reports. Yes, we examined those.

Q. Is that a customary practice in connection with an auditor investigation of the affairs of a company?

A. Invariably.

Q. Did you make any examination into the books and accounts of either Transport Manufacturing & Equipment Company or any other companies?

A. Yes, we found that we had to.

We also made reviews of the federal income tax returns, the general books of account, and the corporate records of Transport Manufacturing & Equipment Company; the books of account and the records of Oklahoma-Colorado Freight Lines, and the books and corporate records of Rocky Mountain Industries.

Q. Rocky Mountain Transportation, Inc.?

A. I'm sorry, yes, Rocky Mountain Transportation.

Q. Were the records you examined adequate for your purpose, Mr. Field?

A. In general, yes. We could have had a bit more information in certain areas.

Q. Well, will you describe some of the information that -- oh, about this information: Did you request it, and what did you find out about it?

15,602 A. Well, some of the information we requested and it was not made available to us. Whether that meant that it did not exist or whether it meant that it was preferred not to show it to us, I don't know.

Q. As far as you know, it might not have existed?

A. It might not have, some of it.

Q. Well, will you describe some of the types of information that you would have liked to have had and weren't able to see?

A. Well, we would have liked to have seen a bit more details, more extensive statistical analysis of operating revenues, so as to show major shippers, and more analysis of expenses, so that we could relate revenues and expenses by type of commodity carried, or by the shipper who shipped the goods, and such type of analysis that is normal to trying to determine whether the operations of the company as constituted in the past are likely to continue in the future.

Q. Were there any reports available which made it possible to ascertain the profits of the company from the operations of the Government Division as distinct from the rest of the common carrier operations?

A. No, we found no such records.

Q. Was there any information available prior to 1956 which would

15,603 indicate the breakdown of the revenues obtained from different types of commodities, even the gross revenues?

A. Prior to 1956 the company had a breakdown between Government Division and general commodities, as I recall.

Q. But it didn't break down between such things as refrigerated commodities or other types of commodities?

A. No, we found no evidence of that.

Q. There were, however, I believe, some breakdowns of that latter that did indicate breakdowns of gross revenues by commodity in 1956 and 1957?

A. I think that starting in 1956 there was a requirement by the I. C. C. that such breakdowns be given, and I think that starting in that year they did keep such records.

Q. Were there any records or breakdowns or statistics available that would enable you to ascertain the relative profitableness of particular types of freight handled at different times by Riss & Company?

A. No.

Q. Was there any information that enabled you to determine the relative profitableness of different sizes of shipments, say LTL versus truckload?

A. No.

A. No.

15,604 Q. Would such data have been significant to your inquiry?

A. I think so, yes.

Q. Well, will you explain in what way?

A. Well, I think, after all, we were being asked to appraise these financial statements as a means of evaluating the business, and as I have explained before, there are many things that have to be considered in addition to financial statements in order to interpret them properly, for them to be of any purpose, any use for this purpose.

For example, if the revenues that existed at the time these results of operations were reported consisted of a certain pattern of shippers or a certain pattern of a type of shipment or size of shipment, and if that pattern were to change at or about the end of the period for which these results of operations were shown, you would obviously have a very significant fact bearing upon the expectation of profits as reported in the past to continue that way in the future.

Q. Would you have found it useful to have indications as to the trend upward or downward of different types of commodities?

A. Yes, and I think that's the sort of information that one would evaluate in terms of the general economy and the way in which it was moving.

15,605 Q. Would you have wanted to find out, for example, the relative profitableness of handling explosives business as against general commodities business?

A. If available, yes.

Q. What use would such information have had to you?

A. Well, the same use as the transportation of any other sizeable amount of one type of item. When so much emphasis is placed on one particular item it is rather important to a prospective purchaser, for example, to know that the revenue from that particular item is apt to continue in the future.

Q. You would certainly want to know whether that item was more or less profitable than the other items?

A. Well, it would be more or less profitable, that would be one phase of it. You would also want to know whether or not it was likely to continue.

Q. What is the fact as to whether or not ordinarily an attempt is made to analyze an earnings history of a business in the light of prevailing economic conditions such as those produced by war or peace, or depression or movement? Is that a customary approach to make in accounting?

A. Well, you are getting me almost out of the field of accounting, Mr. Ball. Accounting is really -- we don't evaluate businesses ourselves.

15,606 Our duty is to provide the data with which they can be evaluated. The purchaser has to make up his own mind. He has to weigh these various factors, one against the other, and to arrive at a judgment as to what these businesses are worth. These are pertinent information. He would certainly want to know what the economic situation has been, what it is now, and what it is apt to be in the future.

Q. In other words, Mr. Field, you are not here to express an opinion as to what the value of Riss & Company's business was on December 31, 1953, or December 31, 1957?

A. I wouldn't presume to do so.

Q. Now, Mr. Field, on April 4, 1960, Mr. Riss testified in this case, at transcript 7602, and I quote:

"Three times the earning capacity of 1953 would be what the company would be worth as a going concern. Whatever they earned times three would be the value."

Now, Mr. Riss then referred to the net ordinary income of Riss & Company before income taxes of approximately $2,800,000.00, which appears on Plaintiff's Exhibit 243-A, and he then reiterated his opinion that Riss & Company was worth three times that amount at December 31, 1953.

Now, Mr. Field, in your opinion, can the value of a business at
15,607 the end of a given year be properly estimated by reference to the earnings of that company for the single year prior to the date of the evaluation?

A. Only in very rare circumstances.

Q. Now, what are the reasons why you make that statement?

A. Well, the results of operation of a single year can hardly be taken as typical of what that company might be expected to do over a period of years. The only way you could determine whether in a rare situation that might exist would be to thoroughly analyze the operations of the year and decide in your judgment whether or not it was a pattern which was apt to continue.

The only place I know of where a single year is used in a method of valuation is in the public utility field of regulation, where the procedure is to try to find a normal or base year and to use that as a test of the earnings required in order to give the company a reasonable return on its invested capital.

But even in that case a most searching analysis of the year is made of the revenues and of the operations, and many adjustments are made to figures as reported in order to put them on what is considered a normal basis;

in other words, to throw out what they call out-of-period adjustments, extra-ordinary items of one type or another.

15,608 Q. Well, carrying on, Mr. Field, I want to ask you as an accountant whether in making an investigation of the affairs of the business for the purpose of evaluating that business, do you make inquiry to any changes that may have occurred of a significant nature during the year under review?

A. Well, yes. That information would be pertinent to a person trying to determine the worth of a company.

Q. Would the existence of any significant changes occurring in that year increase or lessen the value of that year's earnings as a basis of value of the company?

A. I don't know whether it would increase or lessen the value of it. It is necessary information which a person would have to have in order to make any use at all out of the information.

Q. In other words, without other information you couldn't -- if I understand, you couldn't make any use at all out of the earnings of that year; is that right?

A. Not of one year, no.

Q. Now, is it a customary practice of an auditor in the business of a company to inquire of management as to the occurrence of significant events during the course of a year?

A. Yes.

Q. Now, Mr. Field, there is evidence in this record that on

15,609 September 1, 1953, leasing rules were promulgated by the Interstate Commerce Commission which brought to an end the practice of Riss & Company of having their drivers handle shipments beyond Riss & Company's terminals, through interline arrangements.

There is also evidence in this record that this change in the leasing rules created interchange problems for Riss & Company at Denver and other western interchange points.

Accepting this evidence, would this be such a change in operations as you would consider, as an accountant, should be noted in any report made by you in connection with the evaluation of the business?

A. It would bear investigation, if the effect on the operations of the company were material, it would certainly be an important fact.

Q. And if you found that it was a material or important fact, would you require the fact to be noted for the purpose of assisting in the evaluation of that business?

A. Yes, it would have to be.

Q. Now, Mr. Field, the evidence in this case shows that on December 12, 1951, and continuing until August 1, 1953, Riss had --

I am going to put up on the easel here this chart.

15,610 The matter I mentioned about the leasing rules was the Item No. 7 on AWR Exhibit 69. I want to briefly refer to Item 6 there.

The evidence in this case shows that on December 12, 1951, and continuing until August 1, 1953, Riss & Company had an interline arrangement with the Jarman Company which was cancelled by the Jarman Company on that latter date.

Would the fact that such an interline arrangement was terminated August 1, 1953, be a fact which in your opinion would be regarded as a significant factor in determining the value of the Riss common carrier business as of December 31, 1953?

It is an occurrence which would have to be investigated to determine whether it had a material effect on the operations. If it had a material effect on the operations it should be so noted, yes.

Q. Mr. Field, the report of the Interstate Commerce Commission in the Jarman case which was read -- and which are AWR Exhibit No. 101 and has been read to the jury -- shows that in the period December 1, 1951, through May 31, 1952, a total of less than six months, a total of 11,745 shipments weighing 33,936,000 pounds, moving to and from 106 points, were interlined between Riss & Company and Jarman.

15,611 Now, I call to your attention --

Well, I think I will quote the fact because it is shown on Exhibit 214 -- that for the full year 1952 Riss transported a grand total of 1,683,000,000 pounds of freight.

Now, in the light of these figures, would you regard the termination of the interline arrangement with Jarman on August 1, 1953, as a fact of any significance in determining the value of Riss & Company as of December 31st?

A. It doesn't strike me as being an overwhelming fact of significance, Mr. Ball, but the effect of all these things is cumulative and it is one of those things that I would jot down to weigh along with other events of like kind.

Q. And they would all have to be considered, in your opinion?

A. Yes, they would have to be considered.

Q. Now, I also call your attention again to AWR Exhibit 69, and I call here your attention to a fact indicated, Item 5: "The ending of hostilities in Korea on July 27, 1953."

Would you regard the occurrence of such events as one that should be noted and considered in the evaluation of Riss & Company as of December
15,612 31, 1953?

A. If any appreciable portion of Riss & Company business came from war-engendered shipments, yes.

* * *

15,625 Q. We were discussing, Mr. Field, the possible significance of the date of the ending of the hostilities in Korea. I call your attention that on Plaintiff's Exhibit 214, which was the chart that set forth year by year, both the tonnage and the dollar amount of revenues in total of Riss and Company and of the amount of the explosives traffic.

It appears that for the year 1953, $11,455,000, of 39 percent, of
15,626 the total revenue of Riss and Company for that year was derived from the transportation of Government ammunition and explosives.

Would this fact, coupled with the fact of the termination of hostilities in Korea on July 27, 1953, in your opinion, be matters that would affect the valuation of the common carrier business of Riss and Company as of December 31, 1953?

A. They should be considered in evaluating the business, yes.

Q. Now, in what way would these facts affect the valuation of Riss and Company as of this date, and I am speaking again to you as an accountant who is preparing data for the assistance of someone who has to form a value judgment.

A. If this business, which on the face of it is possibly a war-engendered business, were to terminate as a result of the end of hostilities, and if this had, and if the business had been profitable and substantial to the company, I think it very clearly would be a matter which would affect the worth of the company as a going concern in the future.

Q. And this is the type of matter that as an accountant you would require, say, a footnote or a disclosure in any report made for the purpose of evaluating the company?

A. Disclosure, Mr. Ball.

Q. Disclosure?

15,627 A. Yes.

Q. By disclosure you mean you are not concerned with whether it is in a footnote or some other way as long as the fact is brought out?

A. That is right.

Q. Now, in view of all of these facts that I have discussed, assuming there is evidence in the record, in your opinion, could the earnings for 1953 of Riss and Company, and by earnings I refer to the earnings, net operating revenue, of $2,835,000, as shown by Plaintiff's Exhibit 243-A, and could that be properly used as the basis for evaluating the business as of December 31, 1953?

A. On the basis of these events that you have described, it seems to me that it would be very doubtful that it could be used as the basis for

such valuation.

Q. Now, I want to call your attention to here once again to defendant's Exhibit 69 for identification, and this time I want to call your attention to Item No. 8, December 25, 1953, the cease-and-desist order in MC-200, Sub 60 TA effective, and in this order, Mr. Field, Riss and Company was ordered to desist in the transportation of ammunition and explosives to and from a number of points that it had been previously serving with its own trucks.

In your opinion, would the occurrence of this event in the year 1953 be such a change in conditions as you would consider would have to be disclosed
15,628 by you as an accountant in any report which you might make in connection with your investigation for the evaluation of the business?

A. If this resulted in a curtailment of a substantial portion of the carrier business; yes.

Q. Now, I hand you this -- well, I will just refer to the fact and quote the figures.

No, I beg your pardon. I have it here.

I hand you what the Pennsylvania Railroad introduced as their exhibit No. 40, which is revenue in dollars derived in Riss and Company, Incorporated, from the transportation of ammunition and explosives for 1949 through 1953, and it separates these, showing in the black line and revenue derived from movements from points named in AWR Exhibit 61 to points named in AWR Exhibit 62, and between such points;

And state to you that the other exhibits, which a stipulation show, that those are points which Riss was under the order in Sub 60 TA and told they could no longer serve directly.

Now, this chart, PRR No. 40, shows that the amount of revenue in dollars derived from the transportation to and from those points was between six and seven million dollars.

Now, under those circumstances, in your opinion, would the effec-

tive date of the order in Sub 60 TA in December of 1953, be such a fact as would have to be disclosed in any value report made for the purpose of evalua-
15,629 ting the business of Riss and Company?

A. Yes, it would be.

Q. Now, Mr. Field, I call your attention to the top line of Plaintiff's Exhibit 243-A for identification, which shows that the commercial revenues from commercial traffic of Riss and Company from 1949 to 1957, and I call your attention that this shows a decrease in that commercial traffic from '51 to '52, and a further decrease of nearly $2,000,000 from '52 to '53.

Now, I ask you, would you as an accountant regard this as a matter of significance to be set forth or disclosed and commented upon in an audit for the purpose, or investigation for the purpose of evaluating this business?

A. I think it would bear further investigation to determine whether this was a temporary fluctuation or something that might be expected to continue into the future.

Q. Now, I asked you, I believe, earlier, whether there were any records from which you could determine the profits or losses of Riss on the handling of explosives as distinct from general commodities?

A. No.

Q. Did you, turning specifically to the year 1953, did your audit and investigation, or your investigation disclose any -- I am trying, if I may, to avoid the word "audit" because of what you said, this was not a customary
15,630 audit, but this was an investigation.

A. Yes.

Q. Did your investigation with respect to the year 1953 disclose any records from which it could be ascertained whether or not Riss was making money or losing money on the transportation of general commodities?

A. No, there did not.

Q. And your investigation included the reports that were filed by Riss and Company with the Interstate Commerce Commission, did they not?

A. Yes.

Q. So far as the reports filed with the Interstate Commerce Commission are concerned, would it be possible to ascertain for any of the years, 1950, 1951, 1952 or 1953, whether or not Riss was making a profit on the transportation of general commodities as distinct from explosives?

A. Well, the report is not designed to show that.

Q. Now, turning again to Pennsylvania Railroad Exhibit No. 40, which was the one I just handed you, which shows the revenues derived by Riss and Company in the years 1949 through 1953 by serving directly points which the ICC ordered Riss to cease and desist from serving, and I ask you whether or not your investigation of the books and records of Riss and Company disclosed any way in which it could be ascertained what proportion
15,631 of the profits of Riss and Company for the years 1949 through 1953 was derived from the transportation of commodities to or from these points which Riss was held not authorized to serve?

A. We found no such record.

Q. Were there any books or records available to you from which it could be ascertained whether or not Riss and Company derived any net profit whatever in the year 1953 from the transportation of commodities to and from points which it was held authorized to serve?

A. No.

Q. Assuming, Mr. Field, that the transportation of explosives by Riss and Company to or from the points which it was held not authorized to serve was unlawful, in the year 1953, is it possible to say on the basis of the books and records of Riss and Company made available to you, whether or not Riss and Company made any profit whatsoever on the remainder of its lawful operations?

A. No, it is not possible for me to say that.

Q. In other words, do I understand, that assuming that the only lawful operations of Riss and Company were those other than the transportation of goods to and from the points which it was held by the ICC to be unauthorized to serve in Sub 60 TA, is it possible for you to tell from the books and records

of Riss and Company whether Riss and Company made any profit whatsoever
15,632 in the year 1953 from lawful operations?

A. I can't tell whether the profit came from lawful or unlawful operations.

Q. Now, Mr. Field, I have previously pointed out that the evidence in this case shows that on December 12, 1951, and continuing to August 1, 1953, Riss and Company had an interline arrangement with the Jarman Company, which was held by the Interstate Commerce Commission to have been entered into in violation of the Act.

Did you find sufficient data on the books and records of Riss and Company to determine whether the transportation of goods by Riss and Company through use of this interline agreement resulted in a profit or loss to Riss and Company in the years 1952 or 1953?

A. No.

Q. Would it be possible to determine from the records that you saw, whether or not these operations resulted in a profit or loss?

A. There was no determination in the records I saw. I suppose with an extensive investigation you might make some approximation, but we saw no evidence of that.

Q. Now, I want to show you, Mr. Field, a chart that was marked in the cross examination of Mr. Riss, and which has since been received in evidence, which shows from the books and records of Riss, the ICC, from the income tax returns of Riss and Company, the overweight fines or overloading
15,633 costs, for overweight fines that were paid by Riss and Company from 1951 through 1957.

Now, I ask you whether it would be possible from the books and records of Riss and Company which you examined to ascertain what the effect on the profits of Riss and Company was from the transportation of goods in excess of the weight limits imposed by the various states through which Riss operated?

A. They had no records which showed such, and it would be almost impossible to do so.

Q. Now, assume, Mr. Field, that a truck carried two thousand pounds of merchandise in excess of a maximum limit, say, of thirty thousand pounds, and that Riss received the ordinary revenue per hundredweight on this two thousand pounds of merchandise;

Assume also that these goods were transported by the same driver who would have driven the truck to the same destination even if the load had been held to the legal weight limit, and I ask you whether or not, in your opinion, as an accountant, it is likely that Riss and Company could carry this excess load with very little additional cost?

A. It seems likely that they could. The cost of carrying the basic load must be incurred already, namely, the driver and the equipment required. I suppose there would be some additional cost, possibly; there would, of course, be the handling of the additional weight, and possibly some wear and tear on the equipment, and even perhaps an overloading fine.

15,634 Q. But as you say the bulk of the labor cost would already be incurred in the handling --

A. Fixed cost and some cost; yes.

Q. I take it, however, it would be impossible for you to ascertain the extent to which the profits of Riss and Company for the year 1953 may have been increased by the overloading of Riss and Company's trucks in violation of law?

A. It would be almost an impossible cost allocation problem.

MR. BALL: Now, I will ask the jury to turn to the first exhibit in their booklet, AWR 367, which is headed, which is a compilation of Riss and Company's net income after taxes for the years 1938 through 1957 compiled from data set forth in Schedule 2998 in the available ICC reports of Riss and Company.

Does the jury find that in their booklet?

BY MR. BALL:

Q. Now, I ask you first if you were aware that the year 1938 was the first year in which such reports of the ICC are available?

A. I understand that is the case.

15,635 Q. I next ask if you will check to see if this exhibit, 76 for identification, accurately sets forth the income figures reported by Riss and Company to the ICC?

MR. GATES: Excuse me, Mr. Ball, you said Exhibit 76?

MR. BALL: Yes. I beg your pardon. I mean Exhibit 367.

* * *

THE WITNESS: We have had these checked against the ICC reports.

* * *

Q. Now, other testimony in this case shows that Mr. Riss was president and chief executive officer of Riss and Company in 1938 and the succeeding years until the election of Mr. George Powell as president some

15,636 time in 1945.

What does Exhibit 367 show as to the profit results of Riss and Company for the eight years, 1938 to 1945?

A. For those eight years they show as an accumulated loss of $250,000.

Q. In other words, for the entire eight-year period the operations resulted in an aggregate net loss; is that correct?

A. Yes.

Q. What does AWR Exhibit 367 show as to the aggregate profits of Riss and Company prior to the year 1950 in which hostilities broke out in Korea?

A. There was an accumulated earnings of $334,000 through the year 1949.

Q. Now, what then does that make the average annual profit after taxes of Riss and Company for the twelve years of 1938 through 1949?

A. $28,000 profit average.

Q. An average of $28,000 profit for each, or for the twelve-year period?

A. Yes.

Q. Now, bearing in mind, Mr. Field, that hostilities in Korea began on June 25, 1950 and ended on July 27, 1953, as shown on AWR Exhibit 69, would the years 1950 through 1953, in your opinion, be years of normal business operations in evaluating the business of Riss and Company as of December 31,
15,637 1958, bearing that in mind?

A. They would be normal operations for a war period, but whether you consider a war period a normal one and expect it to continue in other years is a matter of question.

Q. Well, do I take it that you mean that you would then have to find out whether the war had any unusual effect on the operations of Riss and Company?

A. Yes.

Q. Now, I have placed on the board, Mr. Field, a chart which is AWR No. 68, which shows Riss and Company's revenue from explosives 1949 through 1953, and ask if this exhibit in any way affects the answer you have just given as to whether the years 1950 through 1953 are normal, and would be considered as normal years in the operations of Riss and Company.

A. They show that a very substantial part, an increasingly substantial part of the revenues was derived from shipments of explosives, and if these shipments of explosives were large during that period only because it was a war period, then I think it would present a prima facie case of a possibility of such operations not continuing into a peace time period.

Q. That would be a fact, would it not, that you would require to be disclosed in any report made of the operations of the company for the purpose of evaluating it as of December 31, 1953?

15,638 A. Yes, it would be a substantial source of revenue which might possibly be curtailed.

Q. Now, turn back again to AWR Exhibit No. 367.

What does this show as to the average annual earnings of Riss and Company for the ten years prior to the year in which hostilities broke out in Korea?

A. That would be 1940 through 1949, I take it, and the average for

that period is some $20,000 profit.

Q. What is the aggregate profit, do you have that computed?

A. No, I didn't add it up. It will force me to do some arithmetic on the stand, Mr. Ball, if you want the aggregate.

Q. Well, you did compute it and the average for the ten years was $20,000? Approximately?

A. Yes.

Q. Which would mean that for the ten years the aggregate was approximately $200,000?

A. Yes.

Q. Now, Mr. Field, on May 2nd, beginning at transcript page 8905, the Court read to the jury a stipulation entered into by the counsel for both parties. This stipulation referred to a petition in the Tax Court of the United States --

* * *

15,639 MR. BALL: This is the stipulation:

"Riss and Company and the defendants stipulate that Riss and Company has presently pending in the Tax Court of the United States, in a case entitled Riss and Company, Incorporated, Petitioners, against Commissioner of Internal Revenue, Respondent, bearing Docket 74950, a petition in which Riss and Company is petitioning for a redetermination of the taxes claimed by the Commissioner of Internal Revenue in his Notice of Deficiency dated April 17, 1958.

"The Commissioner claims that if certain items of income and expense shown on the Federal Income Tax

15,640 Returns, filed by Riss & Company for the years 1952 and 1953, respectively, are given the tax accounting treatment that the Internal Revenue Service regards as proper, the income tax payable by Riss & Company for each of these years will be substantially greater than the income tax which Riss

& Company paid for those years.

"In its petition, Riss & Company has made certain concessions with respect to the redetermination made by the Commissioner in his deficiency notice of April 17, 1958.

"For the year 1952, taxpayer, Riss & Company has made the following concessions:"

And I quote individually these concessions:

"'The taxpayer concedes the award from the Motor Carriers Claims Commission in 1952 in the amount of $75,426.52 is taxable income.'"

Next: "'The taxpayer concedes that the sum of $15,865.10, the cost of securing the award should be disallowed as a deduction from excess profits tax income because of the exclusion of the award in the amount of $75,426.52 from excess profits tax income.'"

Next, "'The taxpayer concedes that the sum of $66,268.80 representing overloading costs and

15,641 And this relates to the year 1952 --

"' is not an ordinary and necessary business expense.'"

Next, "'Of the disallowed expenses of R. R. Riss, Sr. in the amount of $17,868.28, the petitioner concedes the sum of $3,747.20, as an appropriate adjustment.'"

Next, "'The disallowance of the sum of $28,755.02 in 1952 representing Pennsylvania Gross Receipts Tax is conceded.'"

Next, "'The taxpayer concedes that the sum of $6,468.68 representing the cost of securing operating rights of the Jarman Transportation Company in 1952 is a capital expenditure.'"

Next, "'The adjustment as determined by the Commissioner respecting $5,574.96 paid to Frank Whelan

Advertising Company in 1952 is conceded by the taxpayer to be correct.'"

Next, "As to the year 1953, Riss & Company made the following concessions:

"'The taxpayer concedes that the sum of $65,937.19 representing overloading costs and traffic fines is not an ordinary and necessary business expense.'"

Next, "'The disallowance of the sum of $17,468.74 in 1953 representing Pennsylvania Gross Receipts Tax is conceded."

15,642 Next, "'The taxpayer concedes the sum of $1,074.06, representing the cost of securing operating rights of the Jarman Transportation Company in 1953, is a capital expenditure."

Next, "'The adjustment with respect to the cost of a bond in the amount of $1,758.75, on construction of a North Kansas City garage, is conceded by the taxpayer to be correct.'"

That is the stipulation.

THE COURT: Now, is it my understanding from the record that taking into consideration all of those concessions, in which I understand Riss admits the Government is right in their contention as to the amounts, that the other items which were set forth in the deficiency assessment, which I believe you referred to, have been contested by the Riss Company.

MR. BALL: Continue to be contested and there is no --

THE COURT: In other words, to make it simple, Riss and Company says to the Government, in effect, You claim we owe you so much money, and we deny that; we want our day in court; and we are going to fight this out before the Tax Court; and there has been no final judgment on that yet.

MR. BALL: No decision whether Riss is right or Internal Revenue is right.

15,643 THE COURT: I am sure the jury understands that. All right.

BY MR. BALL:

Q. Now, I want to call to your attention particularly, just five of the items that I have read, the award of $75,000 received from the Motor Carriers Claims Commission, next the sum of $15,865 expended in collecting this award; third, the sum of $66,268 of overloading costs and traffic fines in the year 1952; four, certain expense of Mr. Riss, Richard Riss, Senior, in the sum of $3,747 in the year 1952; and five, the sum of $65,000 representing overloading cost and traffic fines paid by Riss and Company in 1953.

Now, looking at those, and I have asked you to review those, will you tell me what in your opinion was the effect of these five, out of the listed concessions made by Riss and Company with respect to the net worth of Riss and Company as shown in the balance sheet of 1952 and 1953?

A. This is an illustration of contingent liability coming to life. These items have been determined after the balance sheet date to have been properly liabilities prior to the balance sheet date, and consequently, if they had been reported at that time, they would have reduced the net worth of the company.

Q. Have you prepared a tabulation showing the over-statement of
15,644 the Riss and Company net worth as of December 31, which were due to these five concessions?

A. Yes, we have.

MR. BALL: I would now like to offer AWR 368, which is the tabulation which this witness has mentioned.

THE COURT: The jury has it?

MR. BALL: Yes, the jury has it. It is the next one in their book.

THE COURT: It is the second page of the exhibit which the jury has.

It may be admitted.

(The document previously marked for identification as Defendant No. 2, AWR, Exhibit No. 368, was received in evidence, a statement of Riss and Company net worth.)

MR. BALL: Now, this exhibit bears the caption, Over-Statement of Riss & Company Net Worth as of December 31, 1953, due to the under-statement of 1952 and 1953 income and excess profits taxes.

BY MR. BALL:

Q. This is a tabulation you prepared?

A. Yes, Mr. Ball.

Q. Now, what is the total amount of the over-statment -- I would like to have just a minute, Your Honor.

I want to call your attention here to the Plaintiff's Exhibit 236 for identification, and I just want to ask you and call your attention to the fact
15,645 that there is a net worth figure.

Now, taking these five items alone, what was the amount of over-statement of net worth that is involved in that particular figure?

A. Well, for these five items, $155,000.

Q. Now, the stipulation I read would indicate that there are other matters still pending. Now, that would be in this litigation with respect to the years 1952 and 1953.

Those matters would be what you call a contingent liability, would they not?

A. Yes, they are still contingent.

Q. And the amount of potential loss under such a contingent liability would be a factor that should be reported and considered in evaluating net worth of the company as of December 31, 1953?

A. Yes.

Q. Now, Mr. Field, earlier you made use of the phrase "economic entity". Will you please explain what you mean by an economic entity from the accountant's point of view and its significance in this case?

A. I used that phrase to characterize a bringing together of resources in the form of capital and personnel under common control directed towards a common objective.

Q. Well, what would the economic enterprise which you might

15,646 describe as the common carrier business of Riss and Company include?

A. As to its carrier business, it would include all the resources, equipment, personnel, and so forth, and property which are used in the carrier operation.

Q. That would include financial resources and the tangible property, franchise rights, and personnel and all of those matters?

A. Wherever it might be.

Q. Now, what is the fact as to whether or not an economic entity is necessarily wholly contained within a single corporation or legal entity?

A. It cuts across corporate lines. In other words, an economic entity may consist of several different corporations or it could possibly be a part of one corporation.

Q. It could be less than all of a single corporation; is that correct?

A. Yes, it could be.

Q. But it also, to get economic entity, it would be the aggregate of all of those resources whether or not all of them were owned by one legal entity; is that correct?

A. Yes, it is a group of operating assets; it is one operating unit.

Q. But there has to be some type of, as you said, a common control or ownership?

15,647 A. Yes, there has to be.

Q. Now, is this distinction between economic and legal entities generally recognized by accounting principles?

A. It is recognized by practices of ours, yes. This gives rise to our technique of consolidation.

Q. Now, explain to the jury what you mean by the technique of consolidation. You have reference, I assume to what are called consolidated statements put out by business?

A. That is right.

Q. Will you describe what you are talking about?

A. Well, very frequently we have an economic entity split up into several different corporations, and although each of these corporations has an entity of its own, still in order to determine the results of operation or the financial position of the economic efforts, it is necessary to bring together all the corporations into one set of statements. We do this by combining their assets and their liabilities and the results of their operations and eliminating inter-company transactions.

Q. As a certified public accountant, what is the fact as to whether or not when you find that the results of a single legal entity do not properly reflect the activities of the economic entity, you require consolidation?

A. That depends on the purpose, Mr. Ball. If it is a, sometimes there are regulatory requirements that the legal entity be reported on, but 15,648 where we are trying to present the statements to stockholders or to prospective purchasers in a prospectus, the consolidation would be required in order to give a realistic picture of the entire operation.

Q. Now, the reports to the Interstate Commerce Commission filed by Riss and Company were required to cover the activities only of that single corporate entity; isn't that correct?

A. Yes; those are the ICC regulations.

Q. But if you were making a report or analyzing or an investigation of the books of account for purpose of evaluating the business, would it be possible to limit your investigation of the books and records of Riss and Company alone?

A. Not in this situation; no.

Q. Now, in your investigation into the common carrier business of Riss and Company, what did you find as to the relationship between the common carrier business considered as an economic entity, and the corporate structure of Riss and Company?

A. We found that the common carrier enterprise was larger than the corporate structure of Riss and Company.

Q. Was it possible for you to give an accurate set of figures for evaluation purposes by looking at the tooks of Riss and Company alone?

A. No.

15,649 Q. Why couldn't you?

A. Because Riss and Company, Riss and Company and several affiliated companies are under the common control of the same person and operate together as an economic entity.

Q. Did you note as the basis of your opinion any inter, or any transaction occurring between Riss and Company and its affiliated companies?

A. Yes, there have been numerous such transactions.

Q. Now, to make it clear, what are the affiliated corporations to which you refer?

A. Transport Manufacturing & Equipment; Rocky Mountain; and Oklahoma-Colorado.

Q. Now, what did you find about the ownership of these four companies and control?

A. I found that the ownership of these, and control of these companies was in the hands of the Riss family.

Q. Did you find any transaction that indicated that they were being operated under a common control for accounting purposes?

A. Yes.

Q. Now, isn't it a fact, Mr. Field, that Riss and Company itself doesn't own or did not own either Transport Manufacturing and Equipment Company, Rocky Mountain Industries, or Oklahoma-Colorado Freight Lines in the period 1954 through 1957?

15,650 A. In that period, no, they did not own them directly.

Q. Well, then, why is it your opinion that you must treat these three companies as part of the same economic entity as Riss and Company?

A. I feel I have no choice in view of the many transactions which occurred among these companies. It was quite apparent that they continued to be operated as part of one entity through the medium of common control

and ownership.

Q. Well, now, you base this opinion, I take it, among other things, upon the actual records that you came across and transactions occurring between Riss and Company and these three other companies; is that right?

A. Yes, sir, I did, Mr. Ball.

Q. And what in your judgment was the effect of these transactions upon the operating results as reported by Riss and Company alone?

A. They meant to me that the operating results of Riss and Company alone could not be taken to be representative of the carrier operation.

Q. Would the results of Riss and Company alone correctly under those circumstances, correctly or truly represent the results of the common carrier business it was franchised to operate?

A. In my opinion, no.

Q. Now, have you prepared a tabulation of the transactions that came to your attention upon which this opinion you have expressed is based?

15,651 A. Yes, I have.

* * *

Q. Now, Mr. Field, will you roughly trace Exhibit 369, headed Intercorporate Stock Relationship of Riss and Company, Incorporated, Transport Manufacturing and Equipment Company, Rocky Mountain Industries, Incorporated, and Oklahoma-Colorado Freight Lines, and I am going to go down very briefly in these headings.

First it indicates Transport Manufacturing and Equipment Company

15,652 was incorporated by Riss and Company, or by those owning Riss and Company, the capital of Riss and Company, in 1942; is that correct?

* * *

THE COURT: Do you disagree on any of these dates? We might save some time.

MR. LAYNE: No, as a matter of fact, as far as I can tell, looking at 369, I have no objection to it.

THE COURT: You accept the dates?

MR. LAYNE: I will accept the dates.

MR. BALL: Well, then, to shorten this, may I just have Mr. Field read down this list, and make such comment as he feels any one of these items calls for?

THE COURT: Yes.

BY MR. BALL:

Q. Will you do that, Mr. Field? Just read this exhibit to the jury.

I want to ask you with respect to 1942 and 1944, where the stock was still, of T. M. & E. was owned by Riss and Company, whether you would have required at that time a consolidation of the accounts in any report on the common carrier business?

15,653 A. Yes, I would have.

Now, to go ahead with this list of intercorporate stock relationships, in 1944 the T. M. & E. stock was sold to Mr. Riss and his family.

Q. Now, at this time was Mr. Riss and his family -- what ownership did they have in Riss and Company?

A. They controlled Riss and Company.

Q. All right. Go ahead.

A. I think perhaps rather than comment on the significance of each of these, Mr. Ball, I will just run briefly down them, summarizing or abbreviating as I go along; and then I can give the same conclusion on all of these transactions because they all mean the same thing to me.

Q. All right. Good.

A. The next two items relate to the sale back and forth of capital stock of Riss and Company to T. M. & E. and back again.

In 1951 the common stock of Riss and Company held by T. M. & E. was sold to the Riss children.

In 1952, there were two transactions consisting of sales by T. M. & E. of the capital stock of Rocky Mountain Industries and of Oklahoma-Colorado Freight Lines, Inc., to the Riss children.

15,654 Q. Now, at that time the Riss family still owned the stock of Transport Manufacturing and Equipment Company?

A. That is correct.

Q. And they still owned the majority or the controlling interest in Riss and Company?

A. Yes.

Now, if I may dispose of the last item and come back to the significance of these -- in 1957, 50,000 shares of $10 preferred capital stock of Riss and Company was issued to Transport Manufacturing and Equipment Company, its affiliate.

Q. Will you comment on that?

A. If I may. There are three transactions which to me are more significant than the others on this list. The sale in 1944 of the T.M. & E. Stock to the family; and the sale in 1952 of the Rocky Mountain Industries and the Oklahoma-Colorado stocks to the children.

Now, the sales of these stocks, considering that after the sale the control of all these four companies was still in the same hands, means to me that there has been no real change in the operation. We are still dealing with the same group of companies that we were dealing with prior to the time that they were sold to the common owners of all the four corporations.

Q. Now, having made that observation and drawn that conclusion, I think you testified earlier that you noted transactions continuing between
15,655 Riss and Company on the one hand and these three corporations, Transport Manufacturing and Equipment Company, Rocky Mountain Industries, and Oklahoma-Colorado Freight Lines?

A. Yes, these companies were intimately bound together by many transactions.

Q. And it was upon the basis of these transactions that you reached the opinion that you could not properly account for this business without a sort of consolidation or analysis of the combined operations?

A. That is right. To me, they demonstrate a closely knit organization.

Q. Now, have you made any tabulation of what you regard as the significant transactions between Riss and Company and these three corporations which you regard as particularly important in reaching the conclusion you have expressed?

A. Yes, I have.

MR. BALL: Now, that one, if the Court please, is Exhibit 370, which was prepared by this witness for this purpose, and I now offer that in evidence.

THE COURT: Is there any objection?

MR. LAYNE: No objection.

THE COURT: It may be admitted.

(The document previously marked for identification as Defendant No. 2, AWR, Exhibit 370, was received in evidence, transactions between Riss & Company and affiliates.)

15,656 BY MR. BALL:

Q. Now, you will look at AWR Exhibit 370, which is headed Transactions between Riss and Company on the one hand and Transport Manufacturing and Equipment Company, Rocky Mountain Industries, Inc., and Oklahoma-Colorado Freight Lines Inc. on the other hand, having a relationship to the common carrier business of Riss and Company.

Now, instead of my going down that and asking you questions which I intended to do, why don't you just read this exhibit to the jury and make such comment as you see fit as you go down, and draw what conslusions you wish to draw from the reading?

A. I shall. The first two items to be considered together, they relate to leases of revenue equipment and space in terminals between Riss and Company and T. M. & E. T. M. & E. during the period 1949 to 1957 owned many units of operating equipment, and leased them to Riss where

they were used in the carrier business.

Q. Mr. Field, I am going to interrupt at this point and place on the board two charts which were identified on the examination of Mr. Richard R. Riss, Senior, which bear upon this subject.

Now, AWR Exhibit 146 shows real estate rentals paid T. M. & E. by Riss and Company covering the years 1949 through 1957; and the chart No. 148 shows the equipment rentals paid T. M. & E. by Riss and Company for
15,657 the years 1949 through 1957.

Now, those are the dollar amounts involved in these intercorporate transactions to which you just had reference?

A. That is right, Mr. Ball. I think they generally state the magnitude of these transactions.

Q. Go ahead.

A. The next item on the list concerns loans between Transport Manufacturing and Equipment Company and Riss and Company. These borrowings back and forth represent or indicate the flow of assets which occurred during this period and which served to link these companies together into a common entity.

Q. Now, Mr. Field, I am going to interrupt here.

The next exhibit in the booklet that has been introduced, which is AWR Exhibit 371, and without losing the place for 370, you can glance at that and that shows the borrowings by Transport Manufacturing and Equipment Company from Riss and Company in the years 1947 to 1950, and 1952 and 1953.

I also have up on the board a chart which was identified on the cross examination of Mr. Riss, Richard Riss, No. AWR 151, which shows the borrowings by Riss and Company from T. M. & E. covering the years 1945, 1946, 1951, 1954, 1955, 1956, and 1957.

15,658 Now, these charts together, do they not, Mr. Field, show that in every year from 1945 on, either T. M. & E. has borrowed money from Riss and Company or Riss and Company has borrowed money from T. M. & E?

A. Yes; the two charts taken together.

Q. Now, these are the borrowing transactions that you refer to in the third item in Exhibit 370?

A. That is right, and to me they indicate that the assets of one company are available to the assets for the use of the other company.

Q. Go ahead.

A. The next item is sale of equipment by T. M. & E. to Riss and Company. In 1951 they sold some city trucks and trailers, as I recall it, to Riss and Company for use in Riss's operations.

In the period 1954 to 1957 equipment was leased by Oklahoma-Colorado to Riss and Company for use in the carrier business.

In 1954, Rocky Mountain Industries was used in making a very substantial purchase of GMC tractors on behalf of T. M. & E. The amount -- the tractors were passed on to T. M. & E. for the same price that Rocky Mountain paid for them. That is the meaning of the words "for accommodation."

Q. That is the quotation, those words, for accommodation, in the testimony of Mr. Riss on the stand?

15,659 A. I understand that is what Mr. Riss said on the stand.

Rocky Mountain Industries has also operated during the period 1954 and 1957 as an agent in buying tractor replacement parts. It obtained a dealer discount on these purchases and passed the discount on to Riss and Company -- pardon me, on to T. M. & E.

This means that Rocky Mountain itself made no appreciable profit or loss from these transactions. They acted as a conduit through which these items of revenue equipment and parts were obtained by the carrier enterprise, and owned by T. M. & E. and then operated by Riss and Company.

In 1954, T. M. & E. sold two terminals to Riss and Company at net book cost.

In 1955, we find them being sold back again at net book cost.

Q. What was the effect that those transactions going back and forth that way at net book cost have?

A. Well, I don't know why that was done. It is a bit -- it is unusual ordinarily to find a transaction of this nature of net book cost between people operating at arm's length, and you find here we have not one but two of these transactions, so I think this is quite significant, I think that it indicates a common control in the relationship of these companies.

15,660 Once again the resources of the carrier operation flowed back and forth among these companies and served to weave them all together into one indistinguishable entity.

In 1956, T. M. & E. sold city trailers to Riss; and then in 1957 Riss sold to T. M. & E. some garages, garage equipment, and tires and tubes.

Q. Now, in that last transaction, Mr. Field, did Riss and Company take the capital gain on the reported amount, on the amount that they sold these things to T. M. & E. ?

A. Yes, they reported a capital gain on their books. Prior to this time, prior to this year it had been Riss's practice to charge tires and tubes to expenses, to purchase them, but in this year they set up their existing inventory of tires and tubes on the books and then transferred them to T. M. & E. This transaction resulted in a recorded capital gain of some $515,000, which together with the $90,000 gain on the sale of the garage and the garage equipment, made up the total of $600,000 I referred to.

Q. Well, now, while Riss and Company took the capital gain, or recorded a capital gain, did they pay any income tax on that capital gain?

A. No, because of the operation of net operating loss carried for Riss.

* * *

15,661 MR. LAYNE: As I understand it, the gain was reported and the tax was paid by credit and loss carried forward.

THE COURT: Is that your understanding?

THE WITNESS: Well, I believe I testified to the effect that the loss was offset by a net operating loss carried forward; that's correct, yes.

THE COURT: Does that answer your question?

MR. LAYNE: The gain was offset.

THE WITNESS: Yes. I didn't mean to imply anything else; I'm sorry if I did.

MR. BALL: I thought the matter was clear.

BY MR. BALL:

Q. The point was that because of the tax situation of Riss & Company, Mr. Field, the capital gain could be taken by Riss & Company without the payment of any taxes.

A. In that year, yes. It would serve to reduce the net operating loss carried forward and you can't determine whether or not it resulted eventually in a payment of tax or not. It depends on whether they were able to avail themselves of all the net operating loss carried forward in future years.

15,662 Q. Now, on the other hand, this was a sale to Transport Manufacturing & Equipment Company of these properties at six hundred thousand plus more than they were carried on the books of Riss & Company. Was there any change in the amount of depreciation that could be taken on these properties by TM&E as against the depreciation being taken by Riss & Company as a result of this transfer?

A. Subject to review by Internal Revenue Service, TM&E would be able to take the six hundred thousand dollars on their books as a cost deductible for tax purposes.

Q. And in 1956 what was the situation as to whether TM&E was making a profit?

A. They were in a taxable position in 1956.

Q. In other words, there was for the year 1956 some apparent tax advantage in making this transfer?

A. In that year, yes, there was.

Q. To the combined entity.

A. Yes, there was.

Q. Now, based upon all of these transactions that have been covered

in AWR Exhibit 370, in your opinion, do the four companies form part of a single economic entity?

A. Yes, they most certainly do.

Q. Were there other transactions between these companies that
15,663 you also noted that corroborated these?

A. In addition to those that are on this list?

Q. Yes.

A. Between these companies? I don't recall any off hand. There were other transactions of a carrier nature with persons other than these four companies.

Q. What would be the result, Mr. Field, if you looked at these four enterprises as a single business entity?

A. Well, I have had an exhibit prepared to show what the combined net worth would have been December 31, 1953 and December 31, 1957.

Q. Does this exhibit assist you in your conclusion that the results of Riss & Company might actually be different than the results of the business entity as a whole?

A. Yes, it most certainly does.

* * *

THE COURT: * * *

Mr. Ball, will you just refresh my recollection on this -- I know it has been discussed during the testimony: what business was the Rocky Mountain Industries, Inc., in and Oklahoma-Colorado?

15,664 MR. BALL: Mr. Riss testified on the stand that Oklahoma-Colorado, during these -- part of this period of time owned certain trailers which it leased to Riss & Company on the same terms as trailers were leased by TM&E.

The witness has already referred to the Rocky Mountain Industries that these two transactions in which they operated as a conduit, first, for the buying of GMC tractors. They took title and passed them on, and that has been covered by previous testimony, and also that they acted as agent.

BY MR. BALL:

Q. Mr. Field, the transactions related to the resources used in the common carrier business of Riss & Company, did they not?

A. That's right.

THE COURT: I recall it now. It slipped my mind.

MR. BALL: I then offer AWR Exhibit 372 for identification in evidence.

THE COURT: It will be received.

(AWR Exhibit 372 was received in evidence. Combined Net Worth Statement.)

MR. BALL: This is the one headed "Combined Net Worth."

15,665 BY MR. BALL:

Q. Now, I have a few questions. This is the exhibit that you prepared, is it not?

A. Yes.

Q. Does this represent a consolidation of the accounts of the four companies?

A. No, not a real consolidation. It is a combination of the accounts as they appear on the books. There may have been certain minor assets carried on the balance sheets which perhaps had been transferred between the companies at other than cost which would ordinarily be eliminating consolidation, but we know of no material such items.

Q. What you have done, then, is look at the balance sheets of these four companies, December 31, 1953 and December 31, 1957, included the net worth for each, and then put them down and total them; is that correct?

A. That's right.

Q. I notice with interest, Mr. Field, that while the balance sheets of Riss & Company show a considerable decrease in net worth from December 31 to December '57, and that is the same figure that was shown on Plaintiff's Exhibit 236, the net worth of Transport Manufacturing & Equipment Company

shows a very considerable increase. Does this fact have any significance to you?

A. Yes. this is the most significant fact shown by this schedule in
15,666 view of the inter-company transactions we have been talking about up to this point. It would seem quite apparent from this that you can't consider one of these companies without considering the other. They are part and parcel of the same enterprise, same economic entity, and all of them come together with common carrier operations.

Q. Mr. Riss, while he was on the stand, testified that substantially all of the assets of TM&E had been derived from its dealings with Riss & Company with the exception of a couple of hundred thousand. This would suggest, then that the net worth here -- or does it suggest, resulting from the combined operations, the resources used in the common carrier business?

A. Yes. It would have to. The only source was the carrier operation.

Q. What does this -- the fact that the net worth of Riss & Company has decreased at the time that the net worth of TM&E increased, what significance does that have upon the nature of the intercorporate transactions, if any, Mr. Field, and the effect of those in possibly distorting the results of any one corporation considered alone?

A. I think it demonstrates again by reason of the recitation of inter-company transactions that we have gone through, that assets have flowed back and forth between these two companies and that you can't determine the financial position of the resources, the assets, at any one time without considering both
15,667 companies together.

Q. And that is equally true, but to a smaller extent, in connection with Rocky Mountain Industries and Oklahoma-Colorado?

A. Yes.

* * *

BY MR. BALL:

Q. Calling your attention to the fact that the combined net worth

figure of the four companies shows a decrease of a million one hundred thousand dollars in the four year period, is it your opinion that the combined net worth of the actual economic enterprise was decreased by this amount?

A. I don't know.

Q. As an accountant, do you believe that this exhibit is evidence of such a decrease?

A. No. I don't think that it is conclusive evidence of a decrease in
15,668 this enterprise.

Q. Why is it that you reach that conclusion?

A. Because there are numerous transactions of a carrier or a semi-carrier nature which are not included in the accounts of these four companies.

Q. And you do not know without examining those what effect those would have upon the changes in net worth in these two periods; is that correct?

A. Yes; that's right.

Q. Now, Mr. Field, have you given any thought to what changes would be required in the operating statements of Riss & Company, Incorporated, to reflect the effect of inter-company transactions upon the operating results of the common carrier business for the years '54 through '57?

A. Yes; and we prepared a schedule for that period which shows some of the -- shows the changes which we think should be made to combine the carrier accounts of these four companies.

Q. Now, has this schedule which you refer to been prepared as an expression of your opinion as changes that should be made?

A. Yes; in order to present the entity about which we are speaking.

Q. And is what has been marked as AWR Exhibit 373 for identification a schedule which you have prepared?

15,669 A. Yes, it is.

MR. BALL: I will now offer AWR Exhibit 373.

THE COURT: It will be admitted.

(AWR Exhibit 373 was received in evidence. Changes in Riss & Company, Inc., Net Operating Revenues (Loss) Statement)

MR. BALL: AWR Exhibit 373 is headed "Changed in Riss & Company, Inc., Net Operating Revenues (Loss)."

BY MR. BALL:

Q. Now, look at the first line on that chart. What does that represent, Mr. Field?

A. The first line is taken from the reports to Interstate Commerce Commission on Form A, and are as read into the record by Mr. Riss.

Q. This is the net operating revenues, but in each instance the parenthesis around them indicates these were losses?

A. In this case loss in each year; yes.

Q. Now, looking at the next subject here on this schedule, you have started there to list the changes which you believe are necessary; is that correct?

A. Yes. You will note that there are three major captions here. The first one is "Intercompany transactions," and the elimination of intercompany transactions is a consolidation technique by which we remove the effect of the transactions between the companies being combined and thereby
15,670 leave in the consolidated accounts only transactions with outsiders.

Q. Well, now, the first item I notice is the intercompany transactions under TM&E, "Rentals charged Riss & Company by TM&E." Will you explain to the jury what this covers and why you have made this suggestion?

A. As previously mentioned, TM&E owns substantial revenue equipment and operates terminal facilities. The revenue equipment is leased to its affiliated company, Riss, and space in its terminal facilities is also leased to Riss. Our entry here is to eliminate this intercompany rental charge.

Q. I notice looking at AWR Chart 148 that the figure of revenue equipment of four million seven hundred ninety-five is the figure indicated as the equipment rentals paid TM&E by Riss & Company for the year '54.

A. That's right, rounded out.

Q. And across the line, the next figures, three figures, are

identical to those on the chart 148 except that you have rounded them out.

A. That's right. In 1957 there is a small difference. We have a million eight fifty-eight, and on the chart they have a million eight seventy-three, and as far as we can tell this was just an error in the ICC report.

15,671 Q. In other words, the eight seventy-three is the figure from the ICC report?

A. That is. We have used eight fifty-eight which we found in the records.

Q. Now, what you have done is, you have added back the rentals then, is that right, into the Riss & Company business?

A. Yes, at this point. Now, subsequently we will bring in the depreciation that TM&E had on this revenue equipment in its place. I would rather go into that later, if I can.

Q. Now, the next item, terminal facilities; explain that.

A. Riss operated terminal facilities and parts of these facilities were rented to Riss & Company. We are, once again, eliminating here the intercompany rental charge and will subsequently throw in the depreciation and expenses of TM&E which relate to operation of these terminals.

Q. Now, I notice the figures there are different from those shown on Chart AWR 146, total real estate rentals paid. That is because there were some rentals for properties other than terminal properties?

A. Yes, sir.

Q. And you have confined the figure on AWR 373 to the rent paid for the terminals themselves?

A. Yes.

15,672 Q. Well, then, any further comment on that item?

A. Not at this time.

Q. Then pass next to the expenses or income in lieu of rentals. Will you explain now this has been computed?

A. Now, this is the substitution of the expenses of depreciation of revenue equipment and the terminal and garage facilities which were

leased to Riss & Company. This line and the next line, "rental income, capital gains or losses, expenses, etc.", which are the net effect of the terminal operations of TM&E, together replace the figures which you see up above recorded under rentals charged Riss & Co. -- two items, Revenue equipment and Terminal facilities. This is where we bring in the accounts of TM&E which relate to the facilities which were subject to the intercompany lease.

Q. Mr. Field, I want to go a bit into this depreciation expense. I take it that the rentals charged were those that covered the five hundred -- among other things -- the five hundred GMC tractors and the 1200 Fruehauf trailers purchased by TM&E in '54.

A. That's right.

Q. And what were the depreciation -- well, in the first place, have you made any computation with respect to the rentals that were paid?

A. Yes; we have prepared an exhibit on that.

Q. And that is the exhibit entitled AWR -- or, "Unit Purchase Price
15,673 and Rental Rates of Equipment Acquired by TM&E During 1954" which has been marked for identification AWR Exhibit 374.

A. That is the exhibit.

MR. BALL: I would like to offer this exhibit.

THE COURT: It will be received.

(AWR Exhibit 374 was received in evidence. Statement entitled "Unit Purchase Price and Rental Rates of Equipment Acquired by TM&E During 1954.)

BY MR. BALL:

Q. Now, this exhibit shows that the first year annual rental rate on the tractors was 56 percent of the purchase price, and the first year annual rental rates on trailers were about 40 percent of the purchase price. Do you know when the rental charges for '54 were recorded on the books of Riss & Company?

A. I don't know the date they were recorded, but they were recorded by each -- each by one journal entry as of December 31, 1954 for the entire year.

Q. Ordinarily in accounting practice that would mean that that journal entry was prepared subsequent to December 31...

A. It could have been.

Q. Now, Mr. Field, what is the fact as to whether Riss & Company paid not only normal income taxes, but excess profits taxes -- not only income taxes, but excess profits taxes in 1953?

15,674 A. Riss & Company?

Q. TM&E.

A. TM&E paid?

Q. Riss & Company paid.

A. Well, they both did; we can make it easy.

Q. Were excess profits taxes then, in addition to income taxes, imposed on both of these corporations in 1953?

A. In 1953; yes.

Q. Now, was the fact that there would be no excess profits taxes payable in '54 known by the end of the year 1954?

A. Yes; that information was known.

Q. Now, what is the fact as to whether or not a loss in Riss & Company's operations in '54 could, under the law, bring about a refund, not only of income taxes, but also of excess profits taxes?

A. Under the law they could be carried back to prior years and bring about a recovery of both normal and surtaxes and also excess profits taxes.

Q. What is the fact as to whether, by December 31, 1954, a tax advantage could have been secured by the common owners of Riss & Company in Transport Manufacturing & Equipment Company by increasing the losses of Riss & Company even if the profits of TM&E were correspondingly increased?

A. Riss & Company had a net operating loss in 1954, and by

15,675 increasing this loss carrying it back to a prior period where excess profits taxes had been paid as well as normal and surtax taxes, they could recover taxes from those periods at a higher rate than would have to be paid by the TM&E in the year 1954 and the excess profits rates would not apply.

Q. As a matter of fact, did Riss & Company recover excess profits taxes as a result of the operating -- paid in prior years as a result of the operating loss shown on the books for Riss & Company for 1954?

A. They did recover excess profits taxes.

Q. Have you prepared a chart to show what the rate of the recovery was, Mr. Field?

A. Yes, I have.

Q. And is AWR 375, "Riss & Company, Inc. Federal Income Tax Loss for the Year 1954 Less Amounts Recovered Through Carrybacks," the chart that you have thus prepared?

A. Yes.

MR. BALL: I now offer AWR 375 in evidence.

THE COURT: Received.

(AWR Exhibit 375 was received in evidence. Statement entitled "Riss & Company, Inc. Federal Income Tax Loss for the Year 1954 Less Amounts Recovered Through Carrybacks.)

15,676 BY MR. BALL:

Q. Now, look at AWR Exhibit 375. Will you explain this chart, Mr. Field? I think you can do it better than I can ask questions about it.

A. Well, it is really rather a simple chart. On the first line it shows the net loss for the year 1954, and through the operation of the carry-back, first to 1952 and then to 1953, we show what amounts of taxes previously paid could be recovered in accordance with the Internal Revenue Code.

Q. Now, for every dollar of loss that Riss showed, that Riss & Company showed, on its income tax return for 1954, what was the cents recovered?

A. Fifty-nine cents is shown on the schedule.

Q. And what was the income tax rate that TM&E would have had to pay on any increase in their profit for the year '54?

A. Fifty-two cents.

Q. So, to the extent that dollar of loss could be transferred from the books of -- where a dollar -- where the losses of Riss & Company could be increased by one dollar, and the profits of TM&E increased by the same dollar, there would be a seven cents tax advantage in having that change made.

A. Yes; until such time as they exhausted their operating loss carry-back advantage.

Q. Now, if it were possible by a different accounting treatment of transactions taking place in 1954 to increase the losses of Riss & Company
15,677 without a corresponding increase in the profits of TM&E, was there even a greater tax incentive to do so?

A. Obviously, getting fifty-nine cents then.

Q. Now, was there a tax advantage to the owners of Riss & Company and Transport Manufacturing & Equipment Company in the use of double declining balance method of depreciation on the newly purchased equipment by TM&E and the payment of correspondingly higher rental amounts by Riss & Company to TM&E?

A. Maybe I had better explain what declining balance depreciation is.

* * *

THE WITNESS: This is a provision of the 1954 Code whereby, for tax purposes, the Government recognizes depreciation calculated on what is called an accelerated depreciation basis. It can be either double declining balance or sum of the years digits. I will stick to double declining balance because one is bad enough.

The way it functions is this: the company estimates the life of its
15,678 equipment. We will say at five years, which, if they depreciate it over a straight line basis, would indicate a rate each year of 20 percent for depreciation. Double declining balance takes that 20 percent rate and

multiplies it by two -- from whence the word "double" -- and the resulting 40 percent is applied to the declining balance of the cost. By declining balance is meant the cost of the property less the depreciation claimed to date. Thus, in an asset which costs a million dollars and had a five year life, under double declining balance depreciation, assuming no salvage, we would take four hundred thousand dollars depreciation in the first year. That would leave a balance net of six hundred thousand dollars, and the next year we would take 40 percent of the six hundred thousand dollars, or, two hundred and forty thousand dollars depreciation, and so on until we exhausted the cost of the asset.

Q. Now, that was perfectly lawful a way for TM&E to set up depreciation on its books, was it not?

A. Oh, yes, it was. Perfectly legitimate tax advantage granted by the Code, and there is nothing wrong about it.

Q. But the testimony shows that the rental to -- charged by TM&E to Riss & Company was based on covering the amount of the depreciation charges, or double declining method. Now, that resulted in an increase of the rentals charged Riss & Company, did it not?

15,679 A. Yes. The rents were higher and might have been on some other basis.

Q. And that would result by the choice of those higher rentals in increasing the tax loss of Riss & Company for 1954?

A. Yes, they would.

Q. And -- but at the same time there would be no corresponding increase in the profit of TM&E.

A. To the extent that the increased rental income on the books of TM&E was offset by this double declining balance depreciation which they were taking on the equipment.

Q. Now, I want to introduce into evidence two documents -- well, they have both been introduced -- AWR 186 and AWR 200.

AWR Exhibit 186, Mr. Field, I think you have seen, was a state-

ment made by Riss & Company some time after the end of the -- after December 31, 1953 asking for postponement of payment of taxes by Riss & Company. I call to your attention the typewritten page -- this is not in your book members of the jury -- the second page, and I call to your attention the wording which I would like to read at this time to the jury.

The heading is "Expected Net Operating Loss for 1954." This was filed by Riss & Company, sometime after December 31, '54.

"The Company officials are of the opinion that an operating loss in excess of $1,100,000 for 1954 can be reasonably anticipated. This opinion is based upon the results of the Company's operations for 1954 through November and an estimate of the results for December."

15,680 Now, do you recall what the actual loss was as reported on the ICC report and in the income tax return?

A. I'm not sure they were the same.

Q. Well, look at AWR 373, Mr. Field. What was the net operating loss reported for the year 1954 as shown by 373?

A. By ICC the three million six O three -- but that figure is your net operating revenue. There may be other items after that for tax purposes. The net operating loss for tax purposes, as I recall, was about three and a half million dollars, Mr. Ball.

Q. And the tax loss payment was in excess of three million dollars?

A. Yes.

Q. Now, if the jury will turn over another sheet, there is a letter dated January 6, 1955, which was written by Mr. Dannevik of Riss & Company to Mr. George Coombs, Jr. of General Motors Corporation. This is AWR Exhibit Number 200.

I am going to read a passage of the -- from the second paragraph.

(Thereupon, Mr. Ball read from the beginning of the second paragraph of AWR Exhibit Number 200 and concluding with the words "which coincide with a declining balance method of computing depreciation.")

Now, I call to your attention the date of this letter is January 6,

15,681 1955, and I also call to your attention that Mr. Dannevik, the

record shows, that he testified in his deposition in this case that the rental between Riss & Company and TM&E had not been determined at the time he gave his deposition testimony in February of 1955.

Now, do these documents that I have read, 186 and 200, and this testimony of Mr. Dannevik, in your opinion, have any bearing upon the reason for the transaction fixing the rent of Riss & Company to cover the double declining balance?

A. Based on these documents, in my opinion, the rental was arranged with the tax effect in mind.

Q. Now, you have prepared, as I think you said, a statement showing the unit purchase price and the rentals; that is Exhibit 374. Would you explain that exhibit relating to the -- as related to the rental rates?

That shows, does it not, that the rental charged by TM&E to Riss & Company for the first year was in excess of 50 percent of the cost of the tractors?

A. That's right.

Q. The purchase price was $12,661, and the rental charge was $7,145.

A. Yes.

Q. Now, have you prepared another exhibit which shows the aggregate, principal and interest payments and rental charges for this equipment?

15,682 A. Yes, I have.

Q. This is what has been identified as AWR Exhibit 376 for identification. That is the exhibit you prepared?

A. Yes.

MR. BALL: I now offer 376 into evidence.

THE COURT: It will be received.

(Thereupon, AWR Exhibit 376 was received in evidence. Statement showing principal and interest payments and rental charges for tractors and trailers.)

BY MR. BALL:

Q. Now, turn to AWR Exhibit 376 which is headed "Comparison of Principal and Interest Payments and Rental Charges - 1200 Fruehauf Trailers," and the second heading, "Comparison of Principal and Interest Payments and Rental Charges - 497 GMC Tractors."

Will you comment on this exhibit?

A. Yes. I think it is explained fairly clearly on the face of it. Perhaps the best explanation is to bring attention to the excess of rental charges over principal and interest payments. The schedule was designed to show the rental charges were not required to be that high in order to provide cash for TM&E to meet its principal and interest payments on the obligations with which it purchased this revenue equipment.

Q. To make this clear, I am going to look at the first column, the figures for 1954. Do I understand that what you mean is that the rentals paid
15,683 by Riss & Company to TM&E for the 1200 Fruehauf trailers exceeded the cash payments that TM&E were required to make by a total of one million a hundred and sixty-three thousand dollars?

A. Yes.

Q. And that the rentals paid in 1955 by Riss & Company to TM&E exceeded the amount of cash payments required by the contracts to purchase by another sum of a million a hundred and fifty-six thousand dollars?

A. That's right.

Q. Now, down below you made the same kind of tabulation with respect to the GMC tractors; is that correct?

A. Yes, sir.

Q. Now, the first column relating to '54 shows again the cash charges that -- cash payments that TM&E would be required to make under the purchase agreements.

A. Yes.

Q. And that is the principal and interest payments; is that correct?

A. That's right; first line on that.

Q. And the rental charges are the amount of rent charged Riss & Company by TM&E.

A. That's correct.

Q. So, as I read this, it means that the excess of the rental charges which Riss & Company had to pay TM&E over the amount that TM&E had to pay in cash payments was nine hundred and twenty-three thousand dollars.

15,684 A. Yes, for the tractors.

Q. And what was the total excess of rental payments made by Riss & Company to TM&E over the amounts that Riss -- that TM&E was obligated to pay for the year 1954?

A. A little over two million dollars on the trailers and tractors combined.

Q. Now, for the year 1955 what was the figure?

A. Two million five hundred and seventy-three thousand dollars.

Q. Now, let's turn back to your chart, AWR Exhibit 373, the changes that you made, and looking at that depreciation expense that you have charged, will you explain how that figure was arrived at in your computation?

A. Yes. We had a bit of difficulty with that. As you have seen, the TM&E depreciation was recorded on a double declining balance basis. The ICC does not permit double declining balance depreciation to be recorded in the accounts, and, also, although it, double declining balance, is a perfectly proper method for amortizing property costs for income tax purposes, it doesn't necessarily represent the exhaustion of the life of the properties.

In other words, although for tax purposes you may be able to take, as, in this case, some, oh, 35 to 50 percent of the equipment costs in the

15,685 first year, that doesn't mean that you have had that much exhaustion of the property as an operating matter.

So, in determining what to put on the schedule for depreciation we have had to depart from the way it has been recorded on TM&E's books. In other words, we have not brought over the double declining balance. We

have put it on a straight line basis which is the one prescribed by ICC.

Q. That is the figure of a million eight hundred and ninety thousand.

A. That's right. That is what I am talking about. And we have also done this: on the books of TM&E, and for tax purposes, they have calculated depreciation on a four year life for tractors and a six year life for trailers. I am bringing these over in order to make this more comparable with the lives used by the carrier, the trucking industry in general. We have used a five year life for tractors and an eight year life for trailers.

As well as being more in line with the industry practice, the five year life on tractors corresponds to the circumstances in this case which indicate that they must have had a life of at least that long, inasmuch as the purchase obligations with GMC were on a five year basis and the rental obligations between the companies were also set up on a five year basis.
15,686 Similarly, with depreciation on the trailers, we have used an eight year basis because that corresponds with the determination of a useful life apparently used in a sale of trailers to Freuhauf in 1957, which I shall come to later.

Q. Now, to sum up what you have done is that you have eliminated the rental charges and substituted therefor straight line depreciation on the purchase price; is that correct?

A. Yes.

Q. Now, what is the next item here, the rental income, and so forth?

A. Well, that is merely the rest of the TM&E items relating to their terminal or revenue equipment operations, administrative expenses relating to those. We brought those in. In effect, this is a substitution of the rentals and terminal facilities eliminated above, as in 1954, $318,000.

Q. In other words, you eliminated the $318,000 of rent, but substituted the expenses and charges that were made against that on the books of TM&E.

A. Yes, and the income too.

Q. You have taken into account the income from outside --

A. Yes. These terminal facilities were also available to outside truckers.

Q. Now, will you explain the next adjustment that appears on AWR 373?

A. We brought in the net income of -- and, in 1957, net loss -- of
15,687 Oklahoma-Colorado Freight Lines, which is part of the carrier activity, and have shown, for purposes of the record, Rocky Mountain Industries, Inc., although their profits were insignificant, so you see no figures across the column, so rounded out to a thousand dollars they fell below that amount.

Q. Incidentally, did your examination of the books indicate that all or most of the income of Oklahoma-Colorado Freight Lines came from the rental of equipment to Riss & Company?

A. Yes.

Q. Now, turn down to the next general category which is headed "Extraordinary income items."

A. These extraordinary income items are items which are corrections of prior years. They were -- in the year in which they were determined they were not a part of operations, consequently it was improper to show them as extraordinary items in that year.

However, in presenting a summary of years it is necessary to take such extraordinary items which, in effect, are corrections of prior years of earnings and to throw them back into the years to which they belong. This is the nature of the items under the extraordinary income item caption.

Q. Do you have any comment to make about any of these items in particular, Mr. Field?

A. I should describe them just briefly, I think.

15,688 Q. Yes.

A. The recovery from General Motors Corporation is, you will note, two amounts: $180,000 in 1954, and $470,000 in 1955. These amounts

are part of a settlement of one and a half million dollars recovered from General Motors Corporation for what Riss claimed were excess maintenance costs of its tractors, and we have thrown them back into the years 1954 and 1955 on the same basis as was done in the report of Management Planning, Inc.

Q. What you have done there is simply, really, in effect, change the years for these expenses for this amount of expenses from where they appear in the books.

A. Well, that's right. These items pertain to, actually, corrections of -- reductions of expenses of prior years, so we have merely put them into the years to which they apply on the basis used by Management Planning, Inc. We had no better basis on which to do it.

Q. In other words, those were actually recorded in 1956, were they not, on the books of Riss & Company; were included in the amount recorded there?

A. I don't recall whether it was 1956 or 1955; one of those two years, Mr. Ball.

Now, the tires -- we have touched upon this item once before. These tires were set up in an inventory and sold to TM&E in 1957. Now, we have thrown the amount of $512,000 which Riss & Company showed as an extra-
15,689 ordinary credit in 1957 back into the two years 1956 and 1957. Now, this is an estimated basis on our part. We had no better basis on which to identify these with the years, but on the basis of information given us by the company that tires would be useful for some 100 to 200 thousand miles, we assume that tires which had a value at the end of 1957 could not have been purchased more than two years ago, so we have allocated this credit among the two years on the basis of tire expense in those years.

The next item are Thermo-King units. There were 400 Thermo-King units, as I recall the number, which were attached to vans, sold to Fruehauf in 1957. The Thermo-King units had been rented on a three year lease option-purchase basis and prior to the sale of vans to Fruehauf TM&E exercised the option to buy these Thermo-King units, and then sold them to

Fruehauf. They recorded an amount as gained in the year 1957. Actually, in retrospect, the transaction would better have been treated as a purchase from the beginning, and, consequently, we have taken the gain and thrown it back into the years over which these units were rented on the basis of rental expense.

The next item is a gain on a sale of trailers to Fruehauf. In 1957 they sold 800 of these trailers to Fruehauf and realized a book gain of $2,215,000. You will note that the only amount shown on this line is $330,000. This is because the gain of $2,215,000 on the books of TM&E
15,690 resulted from comparing the trade-in consideration with book cost depreciated over six years on a declining balance basis. And, as you will recall, when we brought the depreciation of the trailers over into this consolidation we put them on an eight year life. The reason we put them on an eight year straight line life is because that appeared to be basis on which they were valued for purposes of the sale to Fruehauf in 1957. I think you can see the result of that indicates that by reducing the gain of $2,215,000 recorded on the book face to only $330,000.

I realize this is complicated and I apologize for it. I think it has to be done.

Other tires and equipment are just some items shown below the line that we tossed up into the carrier operation. They are clearly a carrier operation.

The discounts received from Rocky Mountain Industries, Inc., as I mentioned previously Rocky Mountain acts as a conduit for purchase of parts and revenue equipment for use in the carrier enterprise. They pass the discounts on to these companies and, in this case, Riss, I believe, Riss showed them below the line. We have brought them up above the line -- pardon me -- in regulatory parlance above and below the line means a part of carrier operations or not a part of carrier operations. We believe that they are part of carrier operations.

15,691 Q. That is based on your opinion as to the proper assignment of

those expenses.

A. That's right.

Then we have two items which -- we must always have a miscellaneous category and these two items are in it.

The first one is the estimated expenses of operating the Riss Building. In the period 1954 to 1957 Riss was permitted by TM&E to operate the so-called Riss Building which was owned by TM&E, and they operated the building, they received income from rents, and they paid expenses.

Now, in the years 1956 and 1957 these items were identified and excluded, but in the years 1954 and 1955 the expenses related to operating this rental activity, which we consider not to be a part of the carrier operation, were not exluded. In fact, they were not identified. Consequently, we have made a modest adjustment here based on an estimated basis to remove the effect of these expenses which are attributable to rental operations not a part of the carrier operation.

Q. Now, the result of these changes which you would make to, in effect, normalize these transactions between the -- relating to the business of Riss & Company, the results appear in the last line; is that correct?

A. Yes; and in the last line we would have, in effect, what is the combined indicated net operating revenue or loss where you see brackets, of the 15,692 combined four companies.

Q. Then these changes would result in showing that they had been made that the total operations of the four years, 1954 through '57, of Riss & Company resulted in a net gain.

A. Yes, it does indicate that.

Q. Now, Mr. Field, despite these adjustments that you have made as indicated by AWR Exhibit 373, the result still show an operating loss for the year 1957. Does this indicate that the carrier business had no value at that time?

A. No; not necessarily.

Q. Well, why do you say that?

A. First of all, I don't think that I have all of the carrier business here on this sheet of paper, and, secondly, there may have been inefficiencies in that year. The resources may have been used in a manner which was not as effecient as some other operator, prospective purchaser, if you would, might have used the resources had he operated the company then.

Q. Well, now, did your investigation of the books and records indicate to you the existence of inefficient operations in '57?

A. We made no particular effort to do that, however, one item did come to our attention: the fact that a substantial number of the tractors of Riss were parked against the fence in 1957.

15,693 Q. This is a matter, and as an accountant, you would regard as an evidence of an inefficiency; is that correct?

THE COURT: Mr. Ball, I haven't stopped you, but you have been testifying a lot yourself. In effect, you have. The only reason I haven't adhered to the rule of not allowing counsel to repeat what a witness ought to say is because this is a highly technical subject, and I made an allowance on that.

MR. BALL: I appreciate the fact that you have. I assure the Court that I wouldn't have -- I accept the fact that what I said was technically improper in that sense.

THE COURT: I understand; all right.

BY MR. BALL:

Q. Do you know what the amount would be that would be attributable to this non use of equipment in 1957?

A. Well, the tractors that were idle were approximately 60 percent of the tractors, and based on the depreciation which we have charged above in the combined statement, that would be $750,000 in 1957.

Q. $750,000 of the expenses -- well, I am again offending, if the Court please.

A. I can continue with this, if you wish.

Q. Yes, would you do that?

those expenses.

A. That's right.

Then we have two items which -- we must always have a miscellaneous category and these two items are in it.

The first one is the estimated expenses of operating the Riss Building. In the period 1954 to 1957 Riss was permitted by TM&E to operate the so-called Riss Building which was owned by TM&E, and they operated the building, they received income from rents, and they paid expenses.

Now, in the years 1956 and 1957 these items were identified and excluded, but in the years 1954 and 1955 the expenses related to operating this rental activity, which we consider not to be a part of the carrier operation, were not exluded. In fact, they were not identified. Consequently, we have made a modest adjustment here based on an estimated basis to remove the effect of these expenses which are attributable to rental operations not a part of the carrier operation.

Q. Now, the result of these changes which you would make to, in effect, normalize these transactions between the -- relating to the business of Riss & Company, the results appear in the last line; is that correct?

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Q. Now, Mr. Field, despite these adjustments that you have made as indicated by AWR Exhibit 373, the result still show an operating loss for the year 1957. Does this indicate that the carrier business had no value at that time?

A. No; not necessarily.

Q. Well, why do you say that?

A. First of all, I don't think that I have all of the carrier business here on this sheet of paper, and, secondly, there may have been inefficiencies in that year. The resources may have been used in a manner which was not as effecient as some other operator, prospective purchaser, if you would, might have used the resources had he operated the company then.

Q. Well, now, did your investigation of the books and records indicate to you the existence of inefficient operations in '57?

A. We made no particular effort to do that, however, one item did come to our attention: the fact that a substantial number of the tractors of Riss were parked against the fence in 1957.

15,693 Q. This is a matter, and as an accountant, you would regard as an evidence of an inefficiency; is that correct?

THE COURT: Mr. Ball, I haven't stopped you, but you have been testifying a lot yourself. In effect, you have. The only reason I haven't adhered to the rule of not allowing counsel to repeat what a witness ought to say is because this is a highly technical subject, and I made an allowance on that.

MR. BALL: I appreciate the fact that you have. I assure the Court that I wouldn't have -- I accept the fact that what I said was technically improper in that sense.

THE COURT: I understand; all right.

BY MR. BALL:

Q. Do you know what the amount would be that would be attributable to this non use of equipment in 1957?

A. Well, the tractors that were idle were approximately 60 percent of the tractors, and based on the depreciation which we have charged above in the combined statement, that would be $750,000 in 1957.

Q. $750,000 of the expenses -- well, I am again offending, if the Court please.

A. I can continue with this, if you wish.

Q. Yes, would you do that?

A. Actually, I don't know that you can say this is an evidence of an inefficient operation in the sense that I am trying to -- the significance
15,694 that I am trying to draw from this. The significance that I am trying to draw from it is that if a would be purchaser went in to buy this business he wouldn't have had to incur $750,000 depreciation on the 60 percent of the tractors that were parked against the fence in that year.

Q. Now, what effect, if you had eliminated this item from it and made a change with respect to this item, what effect would that have had upon the net operating loss which were indicated in your chart AWR 373?

A. Well, if that item of $750,000 were deducted from the depreciation expense, it would have reduced the loss to $150,000.

Q. Well, now, Mr. Field, do you believe, or is it your opinion, that even if you could properly evaluate the various inefficiencies and related factors with respect to the '57 operations, that this would supply you with the necessary data which, with the changes you have made as indicated in AWR Exhibit 373, would enable you to state the financial position in the results of the operation of the Riss carrier business as of December 31, 1957?

A. No.

Q. You mean to tell me, Mr. Field, there are still other factors that you would have to -- that would have to be taken into account in order to make an appraisal of the financial results of the common carrier business of
15,695 Riss & Company?

A. In my opinion, the accounts of these four companies do not clearly define the financial position of the results of operations of this enterprise.

Q. Well, what facts, on what facts are your opinion based, Mr. Field?

A. On numerous transactions with other persons, both of the carrier and semi-carrier nature; flow of assets going back and forth between these companies and the owners who control the companies to the extent that

they have obscured the carrier operations from the other activities carried on by the individuals and by the companies.

Q. What is your opinion, Mr. Field, as to whether or not the business entity that may be described as this common carrier operation of Riss & Company is wholly embraced in the activities of the four corporations you have named?

A. It is not wholly embraced in those four corporations.

Q. Did you find, or did you not find, any indication that some of the resources used in the common carrier business were owned elsewhere than in these four corporations?

A. Yes.

Q. Where did you find that title to some of these resources was located?

A. In members of the family.

15,696 Q. By the family, what do you mean, Mr. Field?

A. I mean the Riss family who own and control these four corporations.

Q. Now, did you find any evidence of transactions between the members of the Riss family and these four corporations concerning these resources?

A. Yes, I have.

Q. Is there any appreciable amount of such transactions?

A. There was a great number of such transactions.

Q. Have you attempted to -- well, what conclusion do you reach from these transactions, Mr. Field?

A. The transactions are so many and of such a nature that I have concluded that the owners of these closely held corporations have not maintained a clear distinction between the affairs of the companies and their own affairs, so that you can distinguish the assets and resources that are attributable only to carrier operations and those attributable only to other operations.

Q. Well, now, what is the effect, if any, of that fact upon any

evaluation of the financial results of the common carrier business of Riss & Company as of either December 31, '53 or December 31, '57?

A. It renders very doubtful any successful outcome in trying to determine the financial position as a result of this operation. The activities and transactions which have occurred would so obscure the record -- well, I'm not sure that it could be untangled.

15,697 I suppose if given the full cooperation of the individuals involved it might be possible to make some sense out of this, but obviously in a proceeding of this type it is not possible.

Q. Have you made any attempt to list the more significant transactions of this character that have affected or may affect the financial results or position of the common enterprise?

A. Yes, I have, and I think that they will support my opinion that you cannot determine the financial position and results of operations of this common enterprise without considering their effect.

Q. Well, I ask you if what has been marked for identification as AWR 377, which is headed -- and, again, I must ask the jury not to look at this until it has been received in evidence -- "Transactions Involving Riss & Company, The Three Affiliated Companies, And Members of the Riss Family Which May Have Affected the Financial Position of the Common Enterprise."

Now, does this exhibit list -- is that the exhibit you have prepared, Mr. Field?

A. Yes, it is.

Q. And does this exhibit list the transactions upon which you base your opinion that the affairs are so interwoven as to prevent a proper appraisal
15,698 of the financial results of the common carrier business of Riss & Company?

A. Yes; substantially all of the transactions, and a few other ones that we didn't list.

MR. BALL: I now offer AWR Exhibit 377.

* * *

15,699 THE COURT: It will be admitted.

(AWR Exhibit 377 was received in evidence. List of transactions involving Riss & Company, the three affiliated companies, and members of the Riss family which may have affected the financial position of the common enterprise.)

BY MR. BALL:

Q. Now, Mr. Field, will you look at the first item and explain something of what you have in mind?

A. The first two -- in fact, the first four items relate to various loans and advances by the four companies that we have been talking about heretofore to members of the Riss family.

Q. Is it your opinion that these loans between these corporations and members of the Riss family have affected the financial results of the common enterprise as reported in the books of Riss & Company? A. Yes, they have.

15,700 Q. Now, have you prepared any tabulation which will illustrate what you have in mind? A. Yes, I have the exhibits.

Q. Now, AWR Exhibit 378 which has at the very top of the page "Riss & Company, Inc. Interest Income from Riss Family Members," and later states "Riss & Company, Inc., Largest Accounts Receivable Balance During Year from Riss Family Members." Is that one of the exhibits you have prepared as illustrative of your opinion?

A. That is the first one; yes.

MR. BALL: I would like to offer AWR Exhibit 378 into evidence.

THE COURT: Any objection?

MR. LAYNE: No objection.

THE COURT: It may be admitted.

* * *

15,706 Q. Now, Mr. Field, we were discussing * * * AWR 377 * * * The list of the transactions between the three affiliated companies and the members of the Riss family which may have affected the financial position of the common enterprise * * *.

* * *

15,740 Q. What significance do these transactions have to you, with respect to the possible evaluation of this common enterprise?

A. The same significance as the other transactions that we have been describing on this exhibit. They are all transactions which serve to weave together the individuals and the corporations which they own, so that it is almost impossible to trace these assets to determine the financial position and results of operations of the enterprise from the financial statements of the company alone.

Q. In your opinion as an accountant, Mr. Field, does or does not this interweaving of the financial affairs of these four corporations and the members

15,740 of the Riss family, help or hinder in an attempt to evaluate the common enterprise, either as of December 31, 1953, or December 31, 1957?

A. It greatly hinders it, because it makes it most difficult to identify the boundaries of the common enterprise and the carrier enterprise.

Q. Do you think that you did properly reconstitute the books so that you could evaluate the common enterprise?

A. I wouldn't want to try, I think it would be a most difficult job.

Q. Now, I call your attention to Plaintiff's Exhibit 236, which is the balance sheet of Riss & Company as of December 31, 1953, showing on it not only the balance sheet but a computation of the net worth, and also a figure of the net worth of the company on December 31, 1957. I ask you for your opinion as an accountant, whether or not the information thus disclosed would form a proper basis for the evaluation of the business of Riss & Company as of December 31, 1957, or December 31, 1953?

A. You mean the information shown on the financial statement.

Q. On the financial statement.

A. Based on the significance of these many inter-corporate transactions and the transactions between the corporations and the people who own them, in my opinion you could not draw any conclusions as to either the value of the carrier enterprise or as to the financial position or its results of opera-

15,742 tions from the financial statements of Riss & Company alone, at either of those dates.

* * *

CROSS EXAMINATION OF MR. ROBERT E. FIELD

BY MR. LAYNE

15, 743 * * *

Q. You made a change in the depreciation, both by extending the period of time over which the equipment was depreciated and by changing it to a straight line basis rather than a double declining balance basis, isn't that right?

A. Yes, we changed the tractor depreciation from four years to five years and the trailer depreciation from six years to eight years.

Q. And that would tend to make less depreciation during the particular period of years and tend to maximize the profit, would it not?

A. It would tend to make the depreciation less.

Q. And that would tend to make the profit greater, would it not?

A. Yes.

Q. And your technique of changing the depreciation from double declining balance, which was actually used by TM&E, to the straight line basis, would also tend to maximize the profit during a particular period of years, as for example in 1954, would it not, shown on Exhibit AWR 373?

15, 744 A. It would have increased the profit in 1954 and 1955; would have decreased it in 1956 and 1957.

Q. I understand. Now, did you make a similar study of what would be the result of putting together the same figures and using the same basis for the year 1953, of this economic entity?

A. No, I did not.

Q. Were you asked to do that by Mr. Ball?

A. No.

Q. As a matter of fact, isn't it quite plain, looking at this data, that if you did the same thing that you did for the years 1954, 1955, 1956 and 1957, for the year 1953, that the profits of the carrier entity would be greater than that shown on Plaintiff's Exhibit 243-A?

A. I don't know that.

Q. You do not know that. You don't know that?

A. No.

Q. Isn't it a fact that if you used the same technique and the same processes which are shown here on AWR Exhibit 373 for the years 1954, 1955, 1956 and 1957, for the year 1953, that the profits of Riss & Company for that year 1953 would be greater than is shown on Plaintiff's 243-A?

A. I don't know, I haven't made that computation.

Q. You weren't asked to do that, were you?

A. No, I wasn't.

15,745 Q. Now, let me ask you, Mr. Field, when was the first time that you had any connection with this investigation, that you recall, that you did on the books and records of Riss & Company and Transport Manufacturing and Equipment Company, Oklahoma-Colorado and Rocky Mountain Industries, and any other books that you saw?

A. Some time last fall or early winter, November-December, I believe.

Q. And where was that, Mr. Field?

A. We started in Kansas City.

Q. And how long did you personally stay in Kansas City on that occasion?

A. I was in Kansas City one day.

Q. I see. Were you accompanied by somebody else at the time?

A. Yes, I was.

Q. Now, you say you stayed in Kansas City one day last fall or early winter, that would be the fall or winter of 1959; we are in the year '60.

A. That is right.

Q. Did you ever go back to Riss & Company after that time?

A. No.

Q. Did you personally ever examine any books of Riss & Company, of Transport Manufacturing and Equipment Company, of Oklahoma-Colorado or of Rocky Mountain Industries at the time --the one day that you were there

in Kansas City in 1959?

15,746 A. We didn't examine any of them in the sense that an auditor reviews it; I reviewed some of the records while I was there, I wouldn't be able to identify them now.

Q. You did on that one day?

A. I did because in company with the man who was to be in direct charge of the assignment, it was necessary for us to determine the condition of the records from what was available.

Q. Did you examine any at any time after that?

A. Not I.

Q. Now, as a matter of fact, you say you were accompanied by another man who was in direct charge of the work?

A. Yes.

Q. And did he have any assistants?

A. Yes, we had up to five or six men.

Q. You had up to five or six men, this was beginning back last fall or early winter?

A. I don't know when we reached that peak, we have done work at two periods out there.

Q. That was before the case started; this case started on January 5th, your investigation began prior to that time?

A. I believe that would follow.

Q. And you say you had five or six accountants out there?

A. At a maximum.

Q. During two periods of time?

15,747 A. No, not all of them during two periods of time.

Q. Well, what would you say, how many days or weeks or months of investigation was involved?

A. I have no idea.

Q. You do not know.

A. Except there were a great many.

Q. There would be a great many? A great many days, weeks, or months?

A. A great many weeks.

Q. A great many weeks. And tell me, Mr. Field, can you tell us now of any information which you asked for from Riss & Company or from the people in Kansas City with respect to the transactions involving the Riss family, that were not turned over to these people?

A. Transactions involving the Riss family? I recall of none reported to me that they were not able to get.

Q. As a matter of fact, everything that they asked for during these many weeks of investigation, was turned over, was it not?

A. No; one exception.

Q. I am talking about the Riss family, now.

A. Yes.

Q. And I am talking about the loans between the Riss family members and TM&E or Riss & Company or any of the other corporate transactions?

15, 748 A. As far as I know, that is right.

Q. Now, you say there was one thing that was not turned over. What was the one thing that wasn't turned over?

A. That related to an analysis of revenues by shippers.

Q. That would be a list of shippers by name?

A. Yes.

Q. That was not turned over

A. Yes.

Q. You know whether the company had it?

A. We asked for it and we were informed that the company had been instructed by you not to turn it over to us.

Q. That is, by lawyers?

A. Yes.

Q. Other than that, were you given everything with respect to the financial data and detail of Riss & Company?

A. We received very good cooperation from the people there.

Q. Is that also true with respect to Transport Manufacturing and Equipment Company's records?

A. Yes.

Q. Is that also true with respect to Oklahoma-Colorado's records?

A. Yes. It appeared to us that what they had available with the exception of those that were withheld on the advice of counsel, they were most cooperative in giving them to us.

Q. And that that was withheld by advice of counsel, was the names of

15,749 shippers, was it not?

A. Yes.

* * *

DEPOSITION OF MR. CYRUS B. WELLER

READ BY MR. NISBET

* * *

15,791 "Q. Do you use any of the so-called rail piggyback service for the movement of any of your trailers?

"A. No, sir, we do not.

"Q. And why is that, Mr. Weller?

"A. Well, we don't find it feasible. We have gone into the matter and studied it in relation to our operation, but we do not have a substantial volume of traffic moving from the points that we could originate it and to the destination points that we could send it to by rail piggyback. Also in metropolitan (most) areas, such as the metropolitan area here of Dallas and Ft. Worth, the type of time schedule that we would be confronted with would not

15,792 be compatible"--

MR. WRIGHT: Excuse me, I think that word is "most" there. "Also in most areas."

MR. BALL (continuing to read answer):

"Also in most areas"--

Beg your pardon --

"-- the type of time schedule that we would be confronted with would not be compatible with the service requirements that we have to meet.

* * *

DEPOSITION OF MR. ROBERT L. MILLER

* * *

15,798 "Q. Let me ask you, did your use of Riss & Company continue after May, 1956, to the same extent and in the same volume as late in 1955 and the early part of 1956?

"A. Along about that time we had to discontinue the use of Riss & Company due to a change Riss was making in their operations.

"Q. What was that change in the operations, Mr. Miller?

"A. They pulled off the two-man operation which we had been using during that period.

"Q. The two-man operation is what is known as a sleeper-cab operation?

"A. Yes.

"Q. Where the two men take over the tractor-trailer unit and deliver to the destination taking turns resting in the sleeper part of the cab?

"A. That is correct.

"Q. What change was substituted for the two man sleeper-cab operation, Mr. Miller?

"A. The information that was given to us from their Kansas City office was --

"Q. The Kansas City office of Riss & Company?

"A. That's right. They were going to run a relay at their terminal

15,799 between here and New York City.

"Q. And other eastern points?

"A. And Eastern points, yes.

"Q. The relay type of operation provided for how many people in the cab?

"A. My information given to me from them, it would be a single

operation from relay station to relay station.

"Q. The unit would be originated under load at St. Joseph, is that correct?

"A. That is correct.

"Q. The unit would be loaded at the Dugdale Packing Company?

"A. In St. Joseph, yes, sir.

"Q. Then it was moved by one man to some point east of St. Joseph, and then there was another driver change, is that correct?

"A. The information I got, that is correct.

"Q. Was that type of operation satisfactory?

"A. No, it wasn't.

"Q. What was your experience in your use of Riss under that type of operation?

15,800 "A. Complaints from our consignee, our customers, of shipments arriving late. We couldn't get a definite delivery schedule set-up, or a time schedule set-up for approximate arrival. Shipments were arriving late and our customers were calling us asking for the time they would arrive, which was very hard for us to find out definite, reliable times.

* * *

READING OF DEPOSITION OF MR. ALBERT A. PIOCH

* * *

15,892 "Q. All right, sir. If I understand it, then, since some time in 1955 you have given no outbound traffic to Riss & Company, is that correct?

"A. That is correct.

"Q. All right, sir. Now, will you please state whether you have ever experienced loss or damage when using Riss & Company?

15,893 "A. Yes. We have had several loss and damage claims, one in particular that I recall concerning twenty cartons of Sunbeam Shavemasters.

* * *

CROSS EXAMINATION OF MR. LESANSKY BY MR. WRIGHT

15,961 Q. Can you tell us, Mr. Lesansky, the commodities that are included in that 631 classification that you used?

A. It covers quite a large range of commodities.

Q. Do you have a list of them?

A. I have a list with me. It is what is published by the Interstate Commerce Commission, but we just show it in greater detail. It enumerates, oh, maybe -- quite a number of sheets here. Shall I just call off a few? Is that what you would like me to do?

Q. Do you mind giving that copy up?

A. I have other things marked on here. We could supply a copy of what constitutes the make-up of our 631.

15,962 Q. Yes. Well, that is what I would like to have.

A. We can supply you with a copy.

Q. For the record. Why don't we mark this for identification. We will give it back to you and you can substitute an unmarked copy.

A. All right.

MR. SHEA: I wonder if this would be helpful. I was going to put this in with the next witness.

MR. WRIGHT: Oh, fine. This has been marked as Atlantic Coast Line Exhibit --

THE WITNESS: -- 541.

BY MR. WRIGHT:

Q. Can you just look at that and see if that corresponds to the description you are referring to?

A. Yes, it is. The Navy, as well as the Army, starting with the time we started to use this in 1953, use a uniform code, and this is the code.

Q. And these tabulations that you have identified here as having been compiled by you include bills of lading which were for any of the commodities on that list that you have just identified; is that right?

A. That is correct.

Q. There are a number of so-called inert commodities in addition to ammunition and explsives; are there not?

A. Yes.

15,963 Q. You, however --

MR. SHEA: Now, if the Court please, Mr. Wright is attempting to define ammunition and explosives. Inert commodities are included within the definition of ammunition and explosives.

THE COURT: Maybe we might get around it by asking what commodities --

MR. SHEA: He has a list of commodities.

THE COURT: -- are not listed as ammunition and explosives.

BY MR. WRIGHT:

Q. Do you see on that list in front of you a heading or sub-heading "AMMO Inert"?

A. Yes, on the third page there is 631.69 -- actually reads, "AMMO Inert." It might be worthwhile to mention at this time, of course, I am not a rate expert. On my sheet, I had a traffic specialist identify what some of these categories would be; but I am not qualified myself to say which ones were or were not, except those that I know just from general experience.

Q. Will you just read us some of the items under that heading, so we will know what they are?

A. "Cartridge, Dummy, 37MM and up. "Projectile, Practice. "Charges, Dummy.

15,964 "Bombs, Practice or Dummy, Including Empty." And so on.

Q. Well, you can tell from reading those descriptions, can't you, that most of those items are not items which have any explosives in them?

A. I would say from a non-technical point of view, yes. You can recognize that some of those would appear to be not explosives.

* * *

CROSS EXAMINATION OF MISS CARWILE BY MR. WRIGHT

15,990 Q. Miss Carwile, as I understood you, this data that you say you used in making up these tables that have been offered here was in the form of cards, IBM cards that were sent to you from the field?

A. That is right.

Q. You didn't have copies of the invoices?

A. You mean of the bills of lading?

Q. Of the bills of lading, excuse me.

A. We have them on file at our field offices.

Q. You have a copy of the bill of lading, too, but you used the cards, the cards contain everything on them that the bill of lading does; do they?

A. That is right.

Q. So you could tell from the cards, if you wanted to, how much of this was inert material or how much was live ammunition and explosives?

A. Yes, according to the commodity breakdowns. If you can determine that from the commodity breakdown.

15,991 Q. Well, the description of the commodity appears on the face of the bill of lading, doesn't it?

A. That is right.

Q. That tells you whether it is inert or live?

A. (Witness nods assent.)

Q. You didn't make any effort, I take it, to determine how many of these shipments were inert material -- how much of the tonnage was inert?

A. No.

Q. But anyone with the copies of the bills of lading could do that?

A. I should think so.

Q. Are you aware of the fact that the commodities in that 631 classification moved at different rates during the same periods of time?

A. No, I do not.

Q. You know nothing -- A. Nothing.

Q. -- about the rates at which any of them moved? A. No.

Q. So that you can't tell us what if anything any of these figures you have given us would show as to the impact of any rate adjustment?

A. No.

* * *

OUT OF PRESENCE OF JURY

THE COURT: Let me ask you a question: Doesn't this come down simply to the lawful rights doctrine, summarizing the whole thing, in the American Tobacco Company case, the lawful rights doctrine?

You have read a lot of these cases. That is what I am trying to get over to the jury. If the people go in there, if the railroads or the trucking people go in there to protect their legal rights, to oppose the granting of an applica-
16,096 tion filed by a competitor, that is one thing, they have a right to do that.

But if by prearrangement, we will say, or by circumstantial evidence, the jury should find that this was only one of many things that they did, pursuant to an illegal objective, pursuant to this so-called conspiracy to eliminate the competition of the plaintiff, and that this was one of the means by which they hoped to accomplish it, their objective, then, would you say if the jury finds that to be a fact that it would be perfectly legal to go into this hearing under those circumstances?

* * *

16,098 THE COURT: Well, at least, if the intervention in these proceedings, any one or more of these proceedings, is to further the purpose of carrying out the so-called campaign of defamation, which you contend is part of the ways and means selected to carry out this alleged conspiracy, then it is a fact, is it not, if they got into these hearings, any one or more of these hearings, for that purpose, it would be at least part of the purpose of driving Riss out of the business of transporting explosives? That is your contention?

* * *

16,119 THE COURT: My question, Mr. Wright, is this: As I understand your contention, from the opening statements of Mr. Layne and Mr. Wright, that one of the ways in which it was expected to get this monopoly or attempt to get this monopoly, was through this so-called campaign of defamation, and they used the intervention of the Sub 84 hearing to carry that scheme into effect, if you want to call it a scheme; that it wasn't done for lawful reasons, it was done for the purpose of inflaming the public, you might say, or the Commission, or the Commissioners themselves, and to put the plaintiff in a bad light throughout the country in the Commission.

Therefore, under the guise of a lawful act, they carried on their campaign, or so-called defamation, which you contend, with a lot of lies, untruths, half truths, and so forth, and the only reason they entered into the hearing -- they didn't go there for a lawful purpose, although it
16,120 was lawful in and of itself.

MR. LAYNE: That is correct, Your Honor.

THE COURT: But it was done pursuant to this pre-existing conspiracy and became what is commonly called an overt act, pursuant to a conspiracy. That is your case in a nutshell, isn't it?

MR. LAYNE: That is correct, Your Honor.

THE COURT: As far as the intervention is concerned.

Now, while listening to argument on the other side, as they appear to argue, it doesn't make any difference, why we went into the hearing, whether we went in there for that purpose or not.

MR. McGLOTHLIN: We have to recognize that you take the view that an unlawful purpose makes the intervention unlawful. As I understand it, what we do say is that you cannot rely to any degree upon the fact of intervention or upon the facts of participation to support a finding of unlawful intent.

* * *

16,125 THE COURT: Let us go back again. I am not drawing any conclusions or I am not saying it means one thing or it means another because I know everything is subject to explanation. It may look black on one side or red on the other, but when it is explained it is perfectly innocent. That is the trouble with conspiracy cases. I know what a lawyer is up against in a conspiracy case because I have been in some of them. I know what your problems are. The hearsay rule and everything else.

But we have got to go back to ascertain how this whole thing started. It didn't start with these hearings by themselves. We all concede that. How did they get into the hearing? What was the purpose of getting in there? You have to review the evidence. Who got these various attorney generals of the various states to write in and criticize the operation of Riss, I believe it is improper, or object to granting certain application? How was that done?

MR. McGLOTHLIN: There is no secret about how it was done.

THE COURT: But there are two arguments. There are two different sets of arguments. It was done perfectly lawful, or it was done by the so-called, if you want to say it that way, the third party technique, by keeping the railroads out of the picture, and getting them to come in.

16,126 Now, I don't recall all the evidence. I remember the highlights of it.

And then you have got your 5,000-pound bill, and you have other various things in the case. You have got your little editorial in the Chicago Tribune, the last exhibit that plaintifff put in through Mr. Wickes, I think, stating, this is one monopoly the railroads want to get back.

It could mean many things. He could just be referring to some writer, who just had a good tongue, and he felt like writing. It could be perfectly innocent when it is explained, but I don't know what the jury is going to believe. Don't you see?

* * *

BY THE COURT TO THE JURY

16,565 I am not going to go over all of the issues, because I will cover those in my rather lengthy charge -- I think it will be rather lengthy -- at the conclusion of the case. This only has to do with the intervention before the ICC.

Now, as I say, this is substantially the same as I gave you at the beginning of the trial; probably is word for word, and I am going to add on just one paragraph.

Now, in regard to the evidence concerning intervention in the Interstate Commerce Commission proceedings, which you heard, I believe last week, and on different occasions, I wish at this time to review for you the contentions of the parties in relation to that portion of the case. I say, that portion of the case alone. That is all I am speaking to this morning.

As you will recall, I summarized those contentions for you at the start of the trial.

Plaintiff, in its complaint, alleged that the Defendants abused the privilege of intervention and participation in proceedings before the Interstate Commerce Commission, and used these proceedings as a vehicle for conducting a campaign of defamation against the Plaintiff; and that Defendants
16,566 induced certain independent organizations to intervene against the Plaintiff in these proceedings through the use of false and misleading statements and publicity concerning the Plaintiff.

Plaintiff, in this regard, also stated that the allegedly false statements and publicity which allegedly induced these organizations to intervene against the Plaintiff were made to them by agents of the Defendants who did not reveal to these organizations their alleged intimate association with the Defendants.

In answer to these charges of Plaintiff, Defendants claim that the alleged unlawful activities of Plaintiff were in violation of the national transportation policy of the Congress, and that the carriers of property in the United States have a right and a duty to assist in the promotion of a sound

national transportation policy; that since the law allows and encourages, as it does, intervention in proceedings before the Interstate Commerce Commission, and other regulatory agencies, the alleged activities of the Defendants in intervening in these proceedings have been the reasonable, ordinary and necessary result of the alleged unlawful activities of the Plaintiff.

Defendants further contend that when governmental bodies and other public organizations intervened or participated in proceedings before the Interstate Commerce Commission involving the Plaintiff, that such inter-
16,567 vention was not the result of unlawful activities on the part of the Defendants, but was instead the result of an independent decision on the part of each such organization that such action was necessary by reason of their respective interests and Plaintiff's alleged unlawful and improper activity.

Now, those are the contentions, briefly and in substance, of the respective parties.

Now, as I have told you before, participation in these Interstate Commerce Commission proceedings, whether it be joint or single, in and of itself is lawful under the law; so also the solicitation of witnesses and testimony in Interstate Commerce Commission proceedings in and of itself is lawful under the law.

Now, as I have mentioned, each of these acts, in and of themselves, are perfectly lawful. Now, what is the problem that you have to resolve in regard to them? It is this: Were they part of a pre-existing conspiracy to which either two or more of the Defendants were a party to drive a competitor out of business, or to monopolize the transportation of explosives and ammunition in interstate commerce? What was the purpose of these activities?

That is a question which you have to resolve, and in resolving that question, you may take into consideration all the facts and circumstances of the case.

* * *

BY THE COURT:

16,575 You disagree with the ruling, of course, in the Noerr case, and the Supreme Court may eventually reverse that decision. I don't say they won't. I don't know what they are going to do.

It seems to me there is a very simple issue on this question of intervention. You can't get the answer unless you analyze all the evidence in the case. I am not going to attempt to summarize what the evidence is in the case. But it seems to me that you have a perfect right to go down there and intervene in these proceedings, do everything you can in the public interest or to protect your interests, to protect your operating rights, to try to keep Riss or any other carrier from operating, oppose his application.

There is no question about that. But if that is done as a result
16,576 of an unlawful agreement among two or more Defendants, if it is done under the guise of a lawful act -- and that is the reasoning, I think, in the Noerr case -- then that presents a different picture. If you get together -- if the Jury finds this to be a fact; I don't know whether they will or not -- and say, in effect: Well now, we are going to carry on this campaign of defamation; we know a lot of the things we are going to say are the truth; some of them may have been stretched a little bit, but at least we have the lawful right to intervene -- but if your purpose in intervening is that this is going to help you carry into effect this conspiracy, if a conspiracy has been agreed to, and that this is just a lawful means or a lawful act of carrying that into effect, and that the illegal objective was the driving of a competitor out of business, or the attempt to monopolize under Section 2 of the Sherman Act, I think that puts a little different complexion on the case.

Now, that is what this Jury, I think, has got to decide. What was the purpose in intervening in these proceedings?

Now, I told you in the beginning, I think, that I expected to follow the law as laid down by the Third Circuit in the Noerr case. I don't have to follow it. I don't think I am bound by it. I think if it were the law in this jurisdiction, I would be bound by it. But I happen to believe that that
16,577 is pretty sound law that the Third Circuit held in that case, until

it is reversed, if it is reversed, and I think the reasoning of Judge Clary in that case, under the facts of the case, are pretty sound; and I have a right, if I choose to do so, under the facts of this case to follow that reasoning.

* * *

DIRECT EXAMINATION OF MR. PIERRE BY MR. FLYNN

17,044 THE COURT: Mr. Flynn, will you tell us, just briefly, what the subject matter of his testimony will be, in connection with what part of the case?

MR. FLYNN: Yes, Your Honor. Mr. Pierre has prepared two sets of exhibits which I will offer in evidence. The purpose of the first set is to meet the assertion made by the Plaintiff that the motor carriers could not, after the railroads had made their rate reductions, meet those rates. We will try to establish that they could in fact meet the rates.

17,045 THE COURT: The railroads couldn't meet the rates?

MR. FLYNN: That the trucks couldn't meet the reduced railroad rates of which the plaintiff complains.

THE COURT: All right.

MR. FLYNN: The second set of exhibits, which is a comparison of Riss rates with rates of other motor carriers, is designed to show, if we can, that during 1956 and 1957 Riss, which had been competitive with other motor carriers, increased its rates above the rates of other motor carriers; and Mr. Pierre, whose qualifications have already been testified to, will be asked to state his conclusion from that fact.

THE COURT: All right. Will you just have him repeat briefly the nature of his qualifications.

MR. FLYNN: Certainly.

Q. Mr. Pierre, will you give your name to the reporter again, please?

A. My name is Ernest C. Pierre, P-i-e-r-r-e.

Q. And you testified previously in this proceeding on behalf of the railroads?

17,046 A. I did, on June 29 and 30 of this year.

Q. Would you briefly restate your qualifications in the transportation field before you begin your present testimony?

A. I have had over fifty years' experience in the railroad transportation field, in traffic matters, dealing with rates and similar adjustments. I was employed by the Atchison, Topeka & Santa Fe Railroad from 1907 until the end of 1944; after which I went to the Transcontinental Freight Bureau in Chicago, first as a member of the Standing Rate Committee of that Bureau, and then as its Chairman from 1953 on.

* * *

Q. Mr. Pierre, in conjunction with your work with the Standing Rate Committee, were you required to acquire some familiarity with motor carrier rates as they affected your work?

A. Yes, sir, I was.

Q. And in the course of your employment with the Transcontinental Freight Bureau, did you become generally familiar with the policies followed by the military in routing Government freight?

17,047 A. Yes, I became familiar with it in handling our adjustments.

Q. How long have you been employed as a consultant in this case?

A. Since July 1 of last year.

Q. And during that time, have you considered the testimony given in this case with respect to rate matters?

A. Yes, sir.

Q. Now, Mr. Pierre, when you testified before, you described a group of men who were working with you in making the rate studies concerning which you testified at that time. Have there been any other persons who have been working with you in this period?

A. In addition to those whom I listed in my prior testimony, there were a Mr. C. E. Halverson, H-a-l-v-e-r-s-o-n, Assistant General Freight Agent of the Atchison, Topeka & Santa Fe Railway, and Mr. Burt Brile, B-r-i-l-e, did some clerical work for us in connection with the preparation of these exhibits.

Q. Did those two gentlemen participate in the other exhibits concerning which you have already testified?

A. No, they did not.

17,048 Q. Did they participate in the preparation of the exhibits concerning which you are here to testify this morning?

A. Yes, sir. They did not participate in the actual preparation of the exhibits, except that Mr. Brile did clerical work on one set of exhibits. But Mr. Halverson did much of the research work to determine the truck rates.

Q. Was Mr. Halverson acting under your supervision and control at that time?

A. Yes, sir, he was.

Q. And were the other people who assisted you in the preparation of these exhibits acting under your supervision and control?

A. Yes, sir.

Q. Mr. Pierre, the last time you were here, you testified in great detail concerning your rather extensive study of railroad rates. Have you made a similar study of motor carrier rates?

A. Well, not to the same extent. We did make a study of motor carrier rates, yes.

Q. What kind of study was that?

A. Well, we selected the points between which Riss handled tonnage, as shown by Revised Schedule B, which is Exhibits 37, 37-A, B and C, in this record, and made a study of the truck rates of Riss, and other motor carriers, and also matched them against the rail rates that were in effect, and changes, in the period from January 1, 1954 to December 31, 1957.

17,049 Q. Did you attempt to do that for all of the points that are set forth in Plaintiff's exhibit 37 and 37-A, B and C?

A. No, sir, we did not.

Q. Were you able to determine all of the motor carrier rates between all of the points which you selected from Revised Schedule B?

A. No, we were not able to determine them all. We put down those that we could find from the documents available to us.

Q. What documents did you use in ascertaining motor carrier rates?

A. Well, we used the tariffs or Section 22 quotations of the various motor carrier bureaus, including the Rocky Mountain Motor Tariff Bureau, Middle West Motor Freight Bureau, Southwestern Motor Freight Bureau, Middle Atlantic States Motor Freight Bureau, Southern Motor Carrier Rate Conference, and some individual motor carrier quotations. For example, Watson Brothers, or Uintah, and also --

Q. How about Riss'?

A. -- all of Riss' quotations.

17,050 Q. Now, with respect to the materials that you have just described, do you know where those were obtained?

A. They were obtained from Riss & Company. And I may add that we also made a search of the public files of the Military Traffic Management Agency in Washington to complete the study.

Q. Now, were you asked to make any specific studies with respect to the motor carrier rate data which you accumulated?

A. Yes, we were.

Q. How many?

A. Two.

Q. Would you tell us what the first was? What were you asked to do?

A. Pardon?

Q. What were you asked to do with respect to the first one?

A. We were informed of the contention of the Plaintiff that the reductions made in the rail rates, particularly in 1955 and 1956, had placed the Plaintiff in a position where those rates could not be met thereafter.

So we were requested to prepare this exhibit to ascertain whether or not that statement was correct.

Q. Was that with respect to whether the Plaintiff in particular could meet those rates --

17,051 A. No.

Q. -- or did meet those rates?

A. It was with respect to truckers in general.

Q. What procedure did you follow in attempting to answer the questions directed to you?

A. We studied these tariffs and quotations I mentioned, obtained the truck rates of Riss & Company, and of other truckers, and we matched them against the rail rates, which were in the Section 22 quotations of the railroads, or the tariffs to which they referred.

Q. Were those railroad rates either set forth specifically or described in the exhibits to which you testified when you were on the stand before?

A. Yes, sir.

Q. What exhibits are those?

A. That would be Plaintiff's Exhibits 219-B through K.

Q. What period did you select for this comparison, Mr. Pierre?

A. We selected a period starting January 1, 1954 and ending December 31, 1957.

Q. Why did you select that period?

A. Well, we felt that we should have a showing of the post-war period; took the first full year following the termination of the Korean War.

17,052 Q. Did you compare anything besides the rates during that period?

A. Yes, sir. We computed the charges resulting from each of those rates, based upon a weight of 90,000 pounds per shipment.

Q. Why did you pick 90,000 pounds?

A. Because that figure has been used extensively in this proceeding, and also because it is very close to the average loading of rail cars of explosives moving during the period.

Q. Mr. Pierre, did you attempt to make this kind of comparison either for all the points in Revised Schedule B or all the points where there was a substantial movement?

A. No, sir, we did not take all the points.

Q. With respect to the points which you studied, did you include all those points in the exhibit that you prepared?

A. I beg your pardon?

Q. With respect to the points which you did study, have you included them all in this exhibit that you have before you?

A. No; we eliminated certain ones.

Q. And why were those eliminated?

A. Because in those instances, the motor truck rates were carried on a minimum of 100,000 pounds, or thereabouts, and it would, in our judgment, have been difficult to harmonize the computation of charges with the uniform basis used in this exhibit.

17,053 Q. Now, Mr. Pierre, do the exhibits that you have before you purport to show all of the motor carrier rates in effect between the points referred to at the times you have stated?

A. No, they do not. We have taken in each case the lowest rate of the motor carrier. For example, Riss & Company may have two rates, one carrying a volume minimum of 30,000 pounds, and a higher rate carrying a truckload minimum of 20,000 pounds. In that case --

Q. Which did you show?

A. -- we used the rate subject to 30,000 pounds, which is lower than the other. Then in another instance, we found that two truck lines operating between the same points may have different rates for the same movement. In that case, we used the lowest.

Q. Why did you pick the lowest?

A. Because those are the rates which in my judgment would move the traffic.

Q. Mr. Pierre, I show you what the Clerk has marked as AWR Exhibits 464 through 491, and ask you if those are the exhibits which you have just described as having been prepared?

17,054 A. They are.

MR. FLYNN: Your Honor, in accordance with your instructions, we have had these marked in advance and have dictated a description in detail into the record. I think it would suffice here to say that AWR Exhibit 464 is an Index of the points considered, and AWR 465 through 491 are the point-to-point rate comparisons of rails, Riss and other motor carrier rates, in the order described in the Index.

THE COURT: Very well. You offer them in evidence?

MR. FLYNN: I do.

THE COURT: No objection? They will be admitted.

(Whereupon Defendant No. 2 AWR Exhibits Nos. 464 through 491 were received in evidence.)

* * *

Q. Mr. Pierre, will you turn to AWR Exhibit 465, which is the first page with anything on it, after the Index, headed, "From Joliet Arsenal, Illinois to Indiana Arsenal, Charlestown or Watson, Indiana."

A. I have it.

* * *

17,055 Q. Will you describe this exhibit, Mr. Pierre?

A. This exhibit compares the rates of Riss & Company, and other truckers, with the rail rates, during the period I stated, except where we were unable to determine the truck rates, up at the top, it is shown by the letters, "NI", meaning, "no information."

Q. Mr. Pierre, does that mean that there wasn't a rate at that time via Riss?

A. No, it does not. It merely means we were unable to determine the rate from the documents available to us.

Q. Would you go ahead, please?

A. Now, on January 1, 1954, until October 19, 1955, the rail rate from Joliet Arsenal, Illinois to Charlestown or Watson, Indiana, was 133.40 per 100 pounds.

During that period, where we had the information, Riss carried a rate of 109, volume minimum, 30,000 pounds; and other truckers carried a rate of 109, with a minimum of 22,000 pounds.

17,056 I may state here that in all cases, the authorities for these rates are shown in the last page of each one of these exhibits.

THE COURT: Excuse me, Mr. Pierre. Which item are you reading from now, Number 1?

THE WITNESS: I am reading from Items 1, 2 and 3, collectively.

THE COURT: One, 2 and 3, all right.

THE WITNESS: Because we didn't have the truck rates on the early ones.

THE COURT: All right.

BY MR. FLYNN:

Q. Mr. Pierre, will you turn to the third page of Exhibit 465? Is that what you referred to as showing the authorities for the rates?

A. Yes, sir. And that is either --

Q. What is that on that page?

A. That is either the third or fourth page of each one of these exhibits, whichever one is the last page.

Q. What is the information shown on the third page of Exhibit 465? What information is shown on that page?

A. Reference is made on that page to the quotation numbers authorizing the rates that are shown on the first page -- rail and truck.

17,057 Q. And there is a similar sheet for each exhibit?

A. Similar sheet for each exhibit.

Q. All right. Will you continue with the first page?

A. Now, effective on October 20, 1955, the rail rates were reduced to 95 cents. And I will state here that all rates I am going to give are in cents per one hundred pounds.

THE COURT: I see.

THE WITNESS: -- reduced to 95 cents, with a minimum of 40,000 pounds, and 80 per cent of that for excess weight above 40,000 pounds, loaded in the same car.

BY MR. FLYNN:

Q. Now, that is the Class 45 and the 80 per cent of Class 45 basis concerning which we have had so much testimony; is it not?

A. That is right. And the truck lines, for the time being, as shown in the second and third portion, remain at 109, until September 1, 1956, when the other truck rates, other than Riss, were reduced to 90 cents, the rail rate, in the meantime, on March 7, 1956, having gone up to 101 cents and 81 cents, respectively.

Now, that 90 cents rate of the truck line, on a 90,000-pound shipment, resulted in a charge to the Government of $810, as will be shown by reference to Page 2, opposite the reference in the first column to No. 9. The rail rates of 101 and 81 cents, respectively, brought together for 90,000 pounds, resulted in a charge of $862.

17,058 Q. I beg your pardon, Mr. Pierre, I think you are off a line there.

A. Am I?

Q. I think the 101 rate is shown in Line 7.

A. I am sorry. $809, I should have said, rail, as against $810 truck, or substantially the same.

Now, on December 28, 1956, as shown in Item 8 of Page 1, the rail rates went up to 108 cents per 40,000 pounds, and 86 cents for the excess weight, loaded in the same car; and the truck rate, other than Riss, remained at 90 cents; Riss having made no change in its 109 cents rate during that entire period.

Here, the charges by rail on 90,000 pounds would be $862, and by truck would be $810, as shown opposite Line 8 on Page 2.

Q. What was the rate via Riss at that time, if the Government care to use them?

A. The rate via Riss was still 109 cents.

Q. What were the charges as a result of that rate?

A. The charges under that rate were $981 for 90,000 pounds.

Q. Will you continue, please?

A. Now, on February 1, 1957, no change was made in the rail rates or the rates of other truckers, but the Riss rate was increased from 109 cents to 124 cents, which continued throughout the period to the end of 1957.

17,059 A further increase in the rail rate was made on August 26, 1957, the 108 rate going to 115 cents, the 86 cents rate going to 92 cents; and those rates continued until the end of the 1957 period.

The rates of other truckers remained at 90 cents until September 30, 1957, when that rate was increased 2 cents to 92 cents, which, likewise, remained in effect until the end of the 1957 period.

Q. Now, how did that 92 cents rate by other motor carriers compare with the rail rate at that time with respect to a 90,000-pound shipment?

A. On the 90,000-pound shipment, the rail rates shown in the last entry, effective on December 31, 1957, resulted in $920, and the truck rate of 92 cents resulted in $828 on a shipment of the same amount.

Q. Mr. Pierre, would you turn to the next exhibit, which is headed, "From Joliet Arsenal, Illinois to Sioux Ordnance, Sidney, Nebraska."

A. No. 466.

Q. No. 466.

A. Yes, sir.

Q. Let's give the Jury a chance to find it, sir.

17,060 Mr. Pierre, will you hold just a second?

MR. FLYNN: Each of these exhibits is three or four pages; so when we change from one to the next, it is necessary to go three or four pages.

BY MR. FLYNN:

Q. All right, will you go ahead, Mr. Pierre?

I don't think it is necessary to go completely through each of these remaining exhibits. If you will, indicate the particular items to which you think reference should be made.

A. Well, for example, taking Item 5. Up to that time, the truck rate was below the rail rate.

On October 20, 1955, the rail rate was reduced to the same amount. within a fraction, as the truck rate, 262 cents. Now, the reason that two-tenths of a cent appears on the rail rate -- which was eliminated in Item 8 -- is because the increased tariff provided for a surcharge on the freight charges rather than on the rate.

Q. That was just a peculiarity in the way that rate was computed?

A. Peculiarity in the rate.

On December 1, 1955, the increased tariff was changed to put a fifteen per cent increase in the old rate on the rate, itself, and the decimal was dropped; and that made the rates even across the board, including Riss, 262, as shown in Line 8.

17,061 Now, for a few months there, after the reduction of March 1, 1956, in the rail rates, which again resulted from Class 45 and 80 per cent of Class 45, the rail rate remained lower than the 262 truck rate for a few months.

Q. How long was that?

A. Well, that was until May 3, 1956, when the truckers, other than Riss, reduced the rate from 262 to 161, which carried through to the end of the period.

Q. Now, was the rate of 161 below or equal to the rail rate as of May 3, or did that occur later?

A. Well, the rail rate was split. The 161 was between the 173 rail rate on 40,000 and the 138 rail rate on the excess weight, so we have to turn to the charges.

In that case, the rail charges on that date were slightly less than the truck charges -- $1382 against -- no, I beg your pardon -- were more than the truck charges. $1382 rail against $1449 -- I am twisted.

Q. The rail charge --

A. I was right the first time. The rail charges were $1382, and the truck charges $1449; but that continued in effect only until the increase in the rail rate, which was made on December 28, 1956, Line 13, when the charges resulting from the truck rate became lower.

Q. Now, Mr. Pierre, directing your attention to Line 11, where we have just determined that the rail charges were somewhat lower on a 90,000 pound shipment --

17,062 A. That is right.

Q. -- what would the situation have been on a 40,000 pound shipment at that time?

A. Well, on the 40,000-pound shipment, the truck rate would have been 161 and the rail rate would have been 173.

Q. Suppose that you only had a 30,000-pound shipment at that time, how would those rates compare?

A. Well, if you had 30,000 pounds moving by rail, you would either have to pay the higher rate in the tariff or pay this 173 cents rate,

including the payment for 10,000 pounds of what we call air in the car. In other words, you would have to base the rate on a 40,000-pound shipment whether you hauled that much or less, if that made lower charges on the carload than the tariff rate at the actual weight.

Q. What about if you moved it by truck, moved 30,000 pounds by truck?

A. Well, if you moved 30,000 by truck, you would get this 161 cents rate, which is subject to a 30,000 volume minimum.

Q. All right, Mr. Pierre, would you turn to the next exhibit, which is 467, and relates to rates between Joliet Arsenal, Illinois and Ravenna Ordnance, Atlas, Ohio?

17,063 A. Yes, sir.

Q. Are there any items in there you want to point out?

A. Up to July 31, 1955, the first three items, the rail rate was 150.65, and the rate of Riss and the other truck lines was 122.

Effective August 1, 1955, the rail rate was reduced to 110; and the Riss rate and the other truck remained at 122, until August 18 of that year, when the 122 rate of the other truckers was reduced to 119 cents; and it was again reduced to 92 cents, effective September 19, 1955; the Riss rate remaining at 122 cents, and the rail rate remaining at 110 cents.

Q. Was there anything different about the minimum weight for that 110 rail rate?

A. The 110 cents rail rate was subject to a minimum carload weight of 80,000 pounds, as against 50,000 pounds applicable to the previous higher rate.

Q. And how about the truck rate of 92 cents, which was in effect at that same time?

A. The truck rate of 92 cents -- the 119 truck rate was subject to a 30,000 volume minimum, and the 92 cents rate was subject to 34,000 pounds.

On October 20, 1955, the rail rate was reduced to the Class 45 and 80 per cent basis, bringing the 110 down to 103.5 cents for 40,000 pounds and 82.8 cents for the excess weight when loaded in the same car.

17,064 Q. Mr. Pierre, referring to Item 7, which you have just described, what was the charge on a 90,000 pound shipment by rail and by the low cost motor carrier at that time?

A. The charge would have been the same, $828.

Q. So that prior to that reduction, the charge by the motor carrier was lower than the rail charge?

A. It was, immediately prior to that reduction.

Q. All right, would you continue, please?

A. Well, now --

Q. I think I can ask you one question here that might cover the rest of this.

Throughout the rest of this exhibit, was the rail charge ever lower than the truck charge?

A. No, except prior to September 19, 1955. In other words, Items 1 to 5 -- Items 4 and 5, between August 1, 1955 and September 18, 1955, the rail rate was lower for that temporary period than the truck rate, but carried an 80,000 pound minimum. It was never lower after that.

Q. After the general reduction of October 20, 1955, as I understand you, the rail charges were never lower than the truck charges.

A. That is correct.

Q. And if you look at Page 3 of this exhibit, it would appear that after December 1, '55, the rail charges were higher than the truck charges; is that correct?

17,065 A. The rail charges became higher and continued higher until the end of the period.

Q. And that was under the Class 45 and the 80 per cent of 45 rate?

A. It was.

Q. All right. Would you turn to the next exhibit, AWR 468, which is Charlestown or Watson, Indiana to Joliet, Illinois?

A. I have it.

Q. Will you please refer to the items there that you regard as significant?

A. In Item 4, it shows that the rail rate was 133.40 cents, as against a truck rate of Riss and other truckers of 109 cents.

Effective October 20, 1955, the rail rate was reduced to 95 cents on 40,000 pounds, and 76 cents on the excess, always when loaded in the same car; and the truck rate remained at 109 cents until September 1, 1956, when the other truck rate was reduced to 90 cents, and the Riss rate remained at 109 cents until February 1, 1957, when it was increased to 124 cents.

Q. Mr. Pierre, for the period after September 1, 1956, which begins with Item 8, how did the rail and truck charges on 90,000 pounds compare?

17,066 A. The charges under the lowest truck rate, after that date, were invariably lower than the rail charges.

Q. They were about the same for a period there; weren't they? From September 1, 1956 to December 27, '56. That is Item 8.

A. Well, yes, they were within a dollar.

Q. And thereafter?

A. And thereafter the truck charges became lower and remained lower than the rail charges.

Q. Mr. Pierre, would you turn to the next exhibit, which is AWR 469, from Iowa Ordnance, West Burlington, Iowa, to Savanna Ordnance, Proving Ground, Illinois.

A. Here is a case where we were able to obtain very little information about the truck rates. We did, however, find a truck rate of 59 cents for a line other than Riss, applicable from June 25, 1956 to the end of the period; at which time the rail rate had become 67 cents on 40,000 pounds, and 54 cents on any excess weight.

Under those rates, the truck charges were in all cases lower than the rail charges on the shipment of the same amount.

Q. Mr. Pierre, would you turn to AWR 470, which relates to rates from Louisiana Ordnance, Doyline, Louisiana, to Pueblo Ordnance, Avondale, Colorado.

17,067 A. Here we have a case of where the rail rate at the commencement of the period was 338.1 cents, as against a truck rate carried by both Riss and by the other competing trucker of 311.

On September 21, 1954, the rail lines reduced their rate to 311, to meet that truck rate.

In the adjustment of October 20, 1955, the rail rate was further reduced to 285.2 cents; the truck rate remained at 311 until October 31, 1955, when the truck rate, other than Riss, was reduced to 287, which was but slightly more than the rail rate.

Q. Now, Mr. Pierre, let me interject at this point. In computing the charges as shown on the second and third page of each of these exhibits, have you taken into account any cost of loading, bracing, blocking, drayage for rail, or any loading costs for truck?

A. No, sir, none whatever. Just the bare rates.

Q. So that the total charges in any of these could be influenced by such costs as you described in your prior testimony as either a rail or truck disability?

A. Yes, sir.

Q. Will you go ahead, please?

A. Now, it will be observed there that on November 18, 1955, Line 5, the motor trucks, including Riss, cut their rates to 270, thereby undercutting the rail rate in effect at that time.

17,068 On March 1, 1956, the rail rate was reduced to 161 cents and 137 cents, on 40,000 and on the excess, respectively, placing the rail rate below the truck rate for a time, until the trucks cut their rate, other than Riss, to 159 on December 13, 1956.

Q. Now, at that time --

A. While the rail rates had gone up to 181 and 145.

Q. How did the charges compare at that time, on December 13 of '56?

A. At that time, the rail charge would have been $1449, and the truck charge $1431.

Q. And that is shown on Page 3 of this exhibit?

A. That is shown on Line 11, on page 3 of this exhibit.

No further changes were made in the rail rates, except the general increases, which occurred after that date, so that at the end of the period, the rail rates were 203 cents on 40,000 pounds and 162 cents on the excess weight,

while the truck rate, other than Riss, was 178. Riss' rate, in the meantime, had increased from 286 cents to 286 cents, then to $3.00, and finally to $3.20.

Q. Would you turn to the next exhibit, Mr. Pierre, 471, which is, Iowa Ordnance, West Burlington, Iowa to Sioux Ordnance, Sidney, Nebraska.

A. Yes, sir.

17,069 Q. Now, that, again, does not show Riss rates; does it?

A. That doesn't show any of Riss' rates. We were unable to determine them from the documents available to us.

Q. And they may or may not have had any between those points at that time?

A. Yes. We don't know.

Q. Now, would you tell us how the rates of the railroads and other motor carriers compared between those points?

A. Well, for example, starting with Line 7, December 1, 1955, the rail rate was 231 and the motor rate was 232 -- practically the same.

February 8, 1956, the rail rate went down to $2.00; the truck rate remained at 232, until March 7, 1956, when it came down to 209.5 cents; and the rail rate, in the meantime, on March 1, had been reduced on Class 45 and 80 per cent, to 145 on 40,000 and 116 on the excess, and for that period was below the truck rate.

However, on February 18, 1957, or almost a year later, the truck rate was reduced to 142, as shown in Line 12. Under that 142, the truck charge on 90,000 pounds would have been $1278; and under the dual rail rates, on 90,000 pounds, would have been $1293.

Q. Somewhat above?

A. Somewhat above.

Now, the rail met the truck rate of 142 on October 23, 1957 on a 40,000-pound minimum, the truck minimum being 30,000 pounds. And that was in effect at the end of the period.

17,070 Q. Mr. Pierre, all of the exhibits that you have talked about up to now have been in that area where the Class 45 and thirty-six per cent rate went into effect; is that correct?

A. That is right.

Q. Have you also made some study with respect to the trans-continental movements where those rates did not go into effect?

A. Yes, sir, I have.

Q. Would you turn to AWR Exhibit 472. That is the first one after the tab.

A. That is right.

Q. And that is from Joliet Arsenal, Illinois, to Umatilla Ordnance, Ordnance, Oregon.?

A. Yes.

Q. I think, Mr. Pierre, that since we don't have the incentive basis that it won't be necessary to refer in each instance to the charges with respect to these exhibits.

A. No, that is right, because we have there a flat rail rate and a flat truck rate all the way through.

However, I think I should call attention to the fact that in all cases the rail minimum is considerably higher, sometimes double the truck minimum all the way through where this basis applies.

17,071 Q. All right. Would you indicate what happened on AWR Exhibit 472, Mr. Pierre?

A. Yes, Up to October 19, 1955, the truck rate of Riss and other truckers was 579, and the rail rate was 617.55.

Now, on October 20, 1955, that was reduced, that rail rate was reduced to 522.1 cents, and evened out to 522 cents on December 1, 1955.

The truck rate was reduced on November 9, 1955 from 579 to 523, or just a cent above the rail rate.

That situation continued in effect with that one-cent spread until December 28, 1956, when the rail rate went up to 581, and the Riss and other truck rate remained at 554.

However, the truck lines, including Riss, did increase their rate to 582 very shortly thereafter, as shown in Line 10, and again, within a cent, just a cent above the rail rate, until August 26, 1957, when the rail rate went up to 619 cents, with no increase in the truck rate until December 1. The truck rates went from 582 up to 620, a cent above the rail rate, but Riss made no increase in its 582 rate on that date.

Q. So as of December 1, 1957, the Riss rate was lower than either that charged by rail or other motor carriers?

17,072 A. It was.

Q. Would you turn to 473, which relates to movements from Kansas Ordnance, Parsons, Kansas, to Deseret Chemical Center, St. John, Utah.

A. Yes. On 473, I don't think I need to go into detail in the early part of the period. But on April 18, 1956 -- I might state here is a case where we were unable to obtain the rates of truckers other than Riss. So you will find the letters, "NI" down the column. But we did get the Riss rates.

On April 18, 1956, the rail rate was 360 cents, which prior to that time was 18 cents less than Riss' rate of 378; but on that date, Riss reduced its

rate to 266, which was considerably under the rail rate; and they continued that rate in effect, despite the further increases that were made in the rail rate under the general increases.

Q. Mr. Pierre, with respect to this particular movement shown in AWR 473, and all of the other transcontinental movements you are directing your testimony to now, when was the last general rate reduction made? What was the date of that?

A. October 20, 1955, the basis was reduced from Class 65 to Class 55, and the minimum was increased from 50,000 to 60,000 pounds.

17,073 Q. So that the $3.60 rate shown on Item 7, as of April 18, 1956, was the reduced rate?

A. It was the reduced rate; and then was subjected to the further general increases after that.

Q. Mr. Pierre, would you turn to AWR Exhibit 474, which follows the second tab.

A. Yes.

Q. That relates to rates from Hawthorne Naval Ammunition Depot, Thorne, Nevada, to Indiana Arsenal, Charlestown or Watson, Indiana.

A. Yes, sir. That also is a transcontinental movement; and it wasn't until October 20, 1955, that the rail rate became as low as the truck rate and, in fact, a little bit under the truck rate, as shown in Line 4.

Then the application of the general increases, starting March 7, 1956, brought the rail rate up, so that on that date, the rail rate was 587, and the truck rate of Riss was 554, and of other truckers, 556, a spread of 2 cents.

17,074 Q. Mr. Pierre, how did the rate charged by Riss during the period from August 13, 1956, through November 30, 1957, compare with the

rates charged by the railroads and how did it compare with the rates charged by other motor carriers?

A. During that period, the Riss rate was lower than either the rail rate or the rate of the other motor carriers as shown on this exhibit.

Q. And what about the last item on that exhibit, item 16?

A. In the last item, effective December 1, 1957, the other motor carriers came down to $6.55, meeting the Riss rate and that rate is two cents lower than the rail rate in effect at that time.

Q. Turn to AWR Exhibit 475 which covers rates from Savanna Ordnance Proving Ground, Illinois, to Hawthorne Naval Ammunition Depot, Thorne, Nevada.

A. Here again we have a case where we were unable to obtain the Riss rates, if they had any in effect.

Q. How does the rates of other motor carriers compare with the rail rates throughout the period covered by that exhibit?

A. Well, it will be seen there, without going into detail, that all the way through the period the motor carrier rate, other than Riss, was below the rail rate in effect concurrently.

Q. All right. Would you turn to AWR Exhibit 476 which relates to rates from Indiana Arsenal-Charlestown-Watson, Indiana to Wingate Ordnance-Wingate, New Mexico, and tell us what the situation was between those points?

17,075 A. Yes. Now, here is another case where the rail rate was never as low as the rate of the motor carrier other than Riss.

Q. How about Riss?

A. It also shows that the Riss rate was higher than the rate of the competing motor carriers all the way through the period.

Q. How did the Riss rate compare with the rail rate?

A. The Riss rate -- in the period October 20, 1955 to November 18, 1955, when the rail rate was first reduced, Class 55, it left the Riss rate 25 cents higher than the rail rate, but that was rectified by Riss, November 19, 1955, their 525-cent rate was reduced to 501-cent, which was just a fraction of a cent over the rail rate, and on down the line for the balance of the period, they met the general increases and maintained a rate one cent over the rail rate until the rail rate was increased to 557, December 28, 1956, but they brought their 531 rate up to 558 a few months later. In other words, they tried to maintain a one-cent spread over the rail rate.

Q. But the other motor carriers were under the rail rate?

A. The other motor carriers had a 495 rate, 495 cents rate through the whole period, they never changed it.

Q. All right. Would you turn to AWR Exhibit 477, headed from Indiana Arsenal, Hoosier Unit, Watson, Indiana to Deseret Chemical Center, St. John, Utah.

17,076 A. Yes, sir.

* * *

17,077 Q. We are now on 477, which is Indiana Arsenal, Hoosier Unit, Watson, Indiana to Deseret Chemical Center, St. John, Utah.

A. Taking the date of December 28, 1956, without going through the whole exhibit, you will find that the rail rate on that date became $5.73, having gone up from 546. The truck rate of Riss had been 477 and remained at that figure while the other truck rate was at that time 501 cents, both of which were well under the rail rate. Now, we lost Riss in the shuffle after that, couldn't find later rates, we do not know how long that 477 remained in effect, but as to the other truckers, the 501 cents went up to 526 in April 1957, when the rail rate was still 573. And then the rail rate, August 26, 1957, went up to

612 cents, with no change in the truck rate until December 1, 1957, when the 526 cents went up to 561, which was still considerably under the rail rate.

Q. Mr. Pierre, referring to AWR Exhibit 477, was there any time, as shown by that exhibit, when either Riss or some other motor carrier was not below the rail rate?

A. No, it was below the rail rate at all times throughout the period; such rates as we have.

Q. Turning to AWR Exhibit 478, which is headed Kansas Ordnance, Parsons, Kansas to Tooele Ordnance, Warner, Utah --

A. Yes. Now, on March -- I mean on January 3, 1956, for example, item 7, the rail rate and the Riss rate were both 328 cents and the other truck rate was 358 cents or higher. Riss and the rails were equal in that period.

17,078 Q. What happened on February 23, 1956?

A. On February 23, 1956, item 9, the Riss rate went down to 266 cents, the rail rate at 328 cents having in the meantime gone up to 343 cents. No change was made in the other truck rate of 358 which continued in effect until April 18, 1956, when it went up to 379, and the Riss rate of 266 was continued until the end of the period, although there were progressive increases in the rail rate, ending with 333 cents.

Q. It was continued to the end of the period on that page?

A. The end of the period -- Oh, wait a minute, I beg your pardon. That continued until August 31, 1957. On September 1, 1957, the rail rate was 333 cents and the Riss rate was increased from 266 cents to 376 cents, putting it well above the rail rate and above the 365 rate of other truckers.

Q. What was the situation at the end of the period, Mr. Pierre?

A. A further increase was made in the Riss rate on December 1, 1957, from 376 cents to 401 cents, which was less than the rail rate at that time which had gone up to 423 cents.

Q. How did it compare with the rate of other motor carriers?

A. The other motor carriers had a rate of 365 and increased it to 390 cents on the same date, December 1, 1957, placing it below the Riss rate and below the rail rate; that was the situation at the end of the period.

12,079 Q. All right. Would you turn to AWR Exhibit 479, which is McAlester N.A.D., Haywood or Savanna, Oklahoma to Sierra Ordnance, Herlong, California.

A. All right. Now, during the earlier period covered by lines 2, 3 and 4, the rail rate -- and 5 -- the rail rate was 499.1, the Riss rate and the rate of the competing trucker was 420 cents or well below the rail rate. On May 12, 1955, the rail lines met that 420 cent rate, so that until March 6, 1956, all three rates were the same, although the rails had increased the minimum to 80,000 pounds. Now, the rail rate started to go up under the general increases to 445 on March 7, 1956, with no change in either of the truck rates; and then the rail rate afterwards went to 467 cents, then 498 cents, and the truck rate other than Riss remained at 420 through that whole period, although Riss made increases from 420 up to 445, then 496, then came down to 467 on September 5, 1957, and went up to 498 on December 1, 1957, equalizing the rail rate then in effect, but well above the rate of the competing trucker.

Q. Would you turn to AWR Exhibit 480 which is headed Indiana Arsenal, Charlestown or Watson, Indiana to Umatilla Ordnance, Ordnance, Oregon.

A. I think there we can start with line 6, December 1, 1955, at which time the rail rate was 549 cents, the Riss rate was 590 cents and the competing truck rate was 549 cents, the same as the rail. Now, the 17,080 rail rate and the rate of other truckers later went up to 582, they remained on a similar basis. On December 28, 1956, the rail rate went to 611 and that was met by the competing trucker on the next day, as a matter of fact, and they again met the --

Q. Mr. Pierre, it wasn't the next day, it wasn't December 29?

A. Wait a minute.

Q. It was met on April 16, I believe.

A. Yes, that is right, I was looking at the wrong date. December 28, 1956, the rail rate went from 582 cents to 611 cents and the truck rate went up to the same figure on April 15, 1957, and again went up to equalize the rail rate of 652 cents on December 1, 1957, at which time the Riss rate was also increased to 652. Now, here is a case of where throughout some of the period the Riss rate and the rate of the competing truckers were equalized, but there is one short period in there, April 18, 1956, to August 12, 1956, when the Riss rate was higher than the competing truck rate and higher than the rail rate, but they came down to meet it after that and maintained it on the same basis, so that at the end of the period all three rates were equalized.

Q. As a matter of fact, Riss was above other motor carriers and above the railroads from November 9, 1955 until August 13, 1956, wasn't it, Mr. Pierre?

* * *

17,081 THE WITNESS: That is correct, and in that period Riss was above the other truckers but then they came down on August 13, 1956, and restored the parity.

BY MR. FLYNN:

Q. Turn to Exhibit 481, AWR Exhibit 481, Mr. Pierre, Crane, Indiana to Port Chicago, California.

A. Yes, sir.

Q. Is it correct that throughout the period January 1, 1954, to December 31, 1957, the motor carriers, both Riss and other motor carriers, had rates which were equal to or below the rates charged by the railroads?

A. Yes, sir, that is correct.

Q. That was true through the entire period?

A. That was through the entire period.

Q. Would you turn to AWR Exhibit 482, headed Ravenna Ordnance, Atlas, Ohio to Umatilla Ordnance, Ordnance, Oregon. What was the situation there, Mr. Pierre?

A. Let us take line 3, March 1, 1955, the motor carriers, including Riss, carried a rate of 630 cents a hundred as against a rail rate of 678.5 cents. The rail rate came down on October 20, 1955, to 573.85 cents and afterwards was evened out to 574 cents. The truck line other than Riss met that 574 cent rate on November 9, 1955, shortly after the rail rate was reduced, and maintained it; Riss did not change his rate of 630 cents at that time. Now, the rail rate went up to 608 cents on March 7, 1956, and the 17,082 trucker other than Riss met that or increased their rate to that figure on April 18, 1956. The next change was a reduction -- Oh, yes, then Riss reduced its rate to 608, September 27, 1956, bringing all of the rates to the same level. Now, the next change was October 3, 1956, when the truck rate other than Riss was reduced two cents to $6.06, with no change in the Riss rate or the rail rate other than the rail rate being further increased to 638 and later to 681. Now, what the other truck line did as a result of those rail increases, was to increase their 606 to maintain a two-cent spread under the rail rate until December 1, 1957, when they placed it on the same basis and Riss also adopted the rate which became 681 cents, rail, Riss and other truckers.

Q. With the exception of the period October 20, 1955 to November 8, 1955, Mr. Pierre, was there any time in there where either Riss or other truckers or both did not have rates equal to or lower than the railroad rates?

A. No, there was not.

Q. All right. Turn to AWR Exhibit 483, which is the first one under the last tab, Joliet Arsenal, Illinois to Ogden Arsenal, Ogden, Utah.

A. There we have the situation, starting with line 6, December 1, 1955, for example, rail rate 420 cents, Riss rate 420 cents, and competing trucker rate 442 cents. The rail rate went up six percent to 445 17,083 on March 7, 1956, with no change in either of the truck rates until March 19, 1956, when the rate of truckers other than Riss was reduced to 421 or one cent above Riss. Now, Riss had reduced the 420, to 420 earlier, so that as of that date the rail rate was 445, the Riss rate was 420, and the other truck rate was 421. Well, there are various changes in there, we may go down to line 15, October 19, 1957, rail was 498 cents, Riss was 492 cents, and other truck rate was 468 cents, or below either Rail or Riss. The other trucker came up to $5.00, December 1, 1957, and Riss increased to 525, the rail rate at that time being 498.

Q. Will you turn to AWR Exhibit 484, Joliet Arsenal, Illinois to Sierra Ordnance Depot, Herlong, California.

A. Yes, sir. On December 1, 1955, to March 6, 1956, line 7, it will be seen that the rail rates, the Riss rates and the other truck rate was the same, 547 cents.

Q. That was after the general reduction which affected this part of the country in a movement of this kind?

A. Yes, sir, that was after the general rail reduction.

Q. What happened after that, in general terms, Mr. Pierre?

A. Well, they all went up six percent and from April 18, 1956 to September 9, 1956, line 9, they all had 580. Later on when the rail rate went up above 580, first to 609, the other trucker and Riss met that on May 14, 1957, but when the rail rate went up to 650 cents, August 26, 1957, neither the Riss rate nor the other truck rate of 609 was increased at that time. However, on October 19, 1957 -- through that period Riss and the other 17,084 trucks were on parity with each other -- however, on October 19, 1957, Riss increased its rate from 609 to 704 cents; no change in the other truck rate or no change in the rail rate. And again on November 27, 1957, Riss again increased its rate to 840 cents and then to 896 cents, December 1, 1957; at that time the 609 rate of the other truck line went up to 650 and became equal to the rail rate then in effect. That was the situation at the end of the period, rail 650 cents, other trucker 650 cents, and Riss 896 cents.

Q. Turn to AWR Exhibit 485, which is Indiana Arsenal, Hoosier Unit, Watson, Indiana to Sierra Ordnance Depot, Herlong, California.

A. Well, there it will be seen --

Q. Is it correct to say there, Mr. Pierre, that throughout this period either Riss or other motor carriers or both had rates which were equal to or below the rail rate, with the exception of the item shown in line 4?

A. With the exception of that decimal, that is correct.

Q. That was October 20, 1955 to November 8, 1955?

A. Yes, and that is, as I stated, as I testified, that is caused by the increase at that time being a surcharge on the charges and the decimals were not dropped.

Q. In general, how do the Riss rates compare with the other motor carrier rates during the period shown on this exhibit?

17,085 A. Well, in the early part of the period, they both carried a 641-cent rate. On November 9, 1955, the other truck rate was reduced to 573; that was met by Riss a little later and became 573, and they were maintained pretty well on a parity until the other truck rate was increased from 607 to 637, April 15, 1957, line 12, equalizing the rail rate, with no change in the Riss rate until May 14, 1957, when Riss went from 607 to 713 cents, the rail rate and the other truck rate remaining at 637, so that put Riss well above both of the others.

Q. Did that continue to be true for the rest of the period?

A. Yes. Riss reduced that 713 later to 679 and then increased it again to 713 and then to 760, while the other truck rate remained below these amounts.

Q. Mr. Pierre, is it correct that the balance of the exhibits in here in this book generally show, with the possible exception of the period immediately following the October 20th rate reduction, such as October 20, 1955 to November 8, 1955, the truck rates were equal to or below the rail rates?

A. Yes, except that it shows Riss rates going up and becoming higher, but the rate of the other truckers was equal to or below the rail rates.

Q. Mr. Pierre, based upon your work in connection with this

17,086 exhibit, and your work in general with respect to rail and motor carrier rates, did you find, in addition to these instances where the motor carrier rates were equal to or below rail rates, other instances where motor carrier rates were higher than the rail rates?

A. Will you read that?

Q. It is a little garbled, let me restate it.

A. All right.

Q. In each of the exhibits you have discussed today to this point, motor carriers met or went below the reduced rail rates?

A. That is correct.

Q. Were there other instances, that you are familiar with, in general terms, where motor carriers did not meet or go below the reduced rail rates?

A. Right now I don't recall. I think their general practice was to meet the rail rates or go below them.

Q. But are you aware as to whether or not there was some cases where they didn't do that?

A. Yes, there probably were.

Q. Were there also cases where rails did not meet reduced motor carrier rates?

A. Oh, yes.

* * *

17,088 Q. In your experience in the transportation industry, have you found that carriers will float and continue in effect for long periods of time rates which do not return to them their costs?

A. No.

* * *

17,091 Q. Mr. Pierre, what was the second study that you were asked to prepare?

A. Well, during the course of our investigation and study of these truck quotations, it came to our attention that there had been some, that situations existed where Riss either did not keep pace with the rates of other truckers, or they actually increased their rates, during a certain period of time, and we took --

Q. Excuse me, Mr. Pierre. You mean increased their rates above those of other truckers?

A. Above those of other truckers.

We gave no consideration to the rail rates in this regard.

Q. What were you asked to do?

A. We were asked to study and prepare an exhibit which would show the situation between points where Riss had a movement as reflected by revised --

Q. Schedule B there?

17,092 A. Their Exhibit 37 series.

Q. Did you look to see whether Riss had a movement at any specific times between those points?

A. We did. The only --

Q. At any specific time?

A. No. We took points where Riss had a movement at some time during the period embraced within that revised Schedule B.

Q. But you looked at the grand total?

A. The grand total for the nine-year period.

Q. Now, Mr. Pierre, in your observations and those of the people working under you, did this action of Riss now reducing rates when other motor carriers did, or increasing rates when other motor carriers did not, occur throughout the period as far as you observed, throughout the period 1949 to 1957?

A. Well, it was -- it occurred within that period covered by the exhibit, which is July 1, 1955 to the end of 1957, but notably along in April and October '56, and February '57, and the fall of '57, and the most of the increases we found between those points were made on or about February 1, 1957.

Q. So that you did find that there was a concentration of this activity?

A. There seemed to be a concentration of the activity, yes, sir.

17,093 Q. Did you obtain the motor carrier rate shown in this exhibit in the same way that you obtained those in the prior exhibit?

A. Yes, we obtained them in the same way and from the same sources.

Q. Mr. Pierre, I show you AWR Exhibits 492 through 534, and ask you if those are the exhibits you prepared, comparing Riss rates and other motor carriers' rates?

A. Those are the ones, yes, sir.

Q. Again, this has been described for the record, Exhibit 492 is an index of points, and Exhibits 493 through 533 are comparisons of Riss rates with those of other motor carriers between July 1, 1955 and December 31, 1957, and Exhibit 534 is an explanation of the abbreviations that have been used.

I would like to offer AWR Exhibit 493 through 534 in evidence, your Honor.

THE COURT: They will be received.

(The documents previously marked for identification as AWR, Defendant No. 2, Exhibits 492 to 534, respectively, were received in evidence.)

* * *

17,094 THE COURT: All right, this has to do only with motor carriers?

MR. FLYNN: That is right.

THE COURT: Nothing to do with rails?

MR. FLYNN: No, sir.

* * *

17,094 Q. Mr. Pierre, you testified this morning that you in the course of your experience with the Transcontinental Freight Bureau had become familiar with the Government routing policies, did you not?

A. Yes, sir.

Q. Mr. Pierre, assuming that ammunitions and explosives traffic had been allocated to motor carriers as the mode of transportation, and assuming that two motor carriers were physically able to perform the service required, and further assuming that one motor carrier had a rate which was lower than that of the other, how would that traffic be divided, or would it be divided between them?

A. The traffic would go via the route that offers the Government
17,095 the lowest rate and charges. If the rates, if the rates of two or more motor carriers, the rates and charges of two motor carriers were equal, it was the policy of the Government to divide the traffic between or among those carrying the lowest rate as nearly equally as practicable.

Q. Now, Mr. Pierre --

MR. GATES: May I have that answer read back? I think Mr. Pierre said something in the beginning via the route, when he had been asked about carrier.

(The last answer was read by the reporter as follows:)

"The traffic would go via the route --"

THE WITNESS: Via the carrier, or carriers offering the lowest rate and charges.

BY MR. FLYNN:

Q. Mr. Pierre, assuming that that policy was followed by the Government, would Riss have been receiving traffic between the points shown in AWR Exhibits 493 and 533 if that traffic had been routed by motor carrier after the date on which it increased it rate above those of other motor carriers?

A. I would say, No.

* * *

DIRECT EXAMINATION OF MR. STEINBRECHER BY MR. BALL

17,223 Q. And I notice that in the last page of that, or the last sentence of that exhibit, 41-B, Mr. Loomis advises the Chief Executives of the member roads of the Association of Western Railways as follows:

17,224 "I am also extending an invitation to interested Eastern and Southern lines."

Now, Mr. Steinbrecher, are you aware of any instances prior to the date of this document when railroads in other territories have been invited or had been invited to join in the planning of the presentation of evidence or the presentation of oppositions to motor carrier applicants?

A. Yes, I remember at least two cases quite well.

Q. What is the purpose of inviting railroads in other territories than that of the Association of Western Railways to join in such matters?

A. Well, to plan and to develop an adequate defense very often we have found, or I have found in any proceeding, in preparing a defense, if you show, for example, traffic involved in the territory that you are interested in and it moves into another territory or another State or over the lines of another railroad, that you are not representing as a defendant or a protestant, the Commission considers the matter as something that has not been proved to what extent the service throughout the whole area has been performed or the type or character of the service that has been rendered.

So, if applications involve more than one territory, a real thorough and good defense practically requires obtaining representatives of the other

17,225 territories to get in there and assist in showing the through movement of traffic, the volume involved throughout the area involved in the application, as well as not merely the territory that you are representing; in this case, the Western lines.

Q. Now, Mr. Steinbrecher, was the number of trucker applications which were consolidated together in the Consolidated Explosives case which was tried on the same record or to which the record in the Riss case became applicable, was this number of trucker applications an unusual number at that time?

A. Yes, decidedly.

Q. Was the territory covered by these applications unusual in extent?

A. Yes, very definitely.

Q. Was the amount of freight traffic potentially involved in the Riss and Consolidated Explosives cases unusual in extent?

A. Yes, from the standpoint of its revenue-producing quality, that is, it was quite an extensive application.

MR. BALL: I have had marked for identification a map as AWR Exhibit No. 535, a map headed "Irregular Route Applications in Consolidated Cases."

17,226 I wouldn't offer it now, but I am going to have the witness explain the map, and I would like to have him do it in front of the jury if I may mount it and identify it.

THE COURT: All right. Without objection, it will be admitted.

(Thereupon a map headed "Irregular Route Applications in Consolidated Cases," marked Defendant No. 2 (AWR) Exhibit No. 535 for identification, was received in evidence.)

(Exhibit was mounted on easel.)

BY MR. BALL:

Q. Can you see the map from there, Mr. Steinbrecher?

A. Dimly.

(Laughter.)

Q. Was that map, incidentally, prepared under your direction?

A. Yes, sir.

Q. Now, I am going to come to it here in a minute, but I want to ask a few preliminary questions:

Have you made any study of the permanent explosives authority that was sought in the Consolidated Explosives cases by carriers other than Riss & Company?

A. Yes.

MR. BALL: I might say, if the Court please, that I have asked Mr. Steinbrecher to note certain dates and certain numbers here so that he can be sure that his answers are going to be accurate.

17,227 BY MR. BALL:

Q. Mr. Steinbrecher, what is the fact as to whether or not you and the other counsel representing the various railroad protestants presented evidence in the Riss proceeding, that is, MC-200-Sub 84, to cover your opposition to the applications included in the Consolidated Explosives cases?

A. That's correct, we did.

Q. Yes, and why did you present this evidence in the proceedings involving Riss & Company, MC-200 Sub 84, rather than indirectly in the Consolidated Explosives cases?

A. So that it would apply in so far as it was pertinent to the application of Riss.

Riss had insisted that it was entitled to a separate hearing in view of the fact that the Supremer Court by mandate had sent the application back, the Sub 84 application back to the Commission.

Counsel for Riss had insisted that he felt and his client felt he was entitled to an exact carrying out of the Supreme Court's mandate, namely, a separate trial. And so he was entitled to put on his evidence, or Riss was entitled to put on its evidence first.

Q. Well, now, what is the fact as to whether there was any
17,228 arrangement or agreement that made the evidence in the Riss case introduced by the Railroads pertinent to the Consolidated Explosives case?

A. Well, that was covered by stipulation.

Q. A stipulation made in advance of the hearings?

A. Yes, sir. The pre-hearing conference in Washington, D.C., at the time these applications and the hearing of these applications was being considered by the Commission, and some general plan of operation was being laid out, or guidelines were being laid down for the presentation of evidence--there was this stipulation and agreement entered into that the testimony of the railroads would be only given once, to avoid duplication and waste of time, and expense, and it would be incorporated then by reference in each of the other applications that were being heard on the Consolidated record as well as in the Riss case.

Q. Well, now, you were not present at this pre-trial meeting yourself?

A. No.

Q. But what you did, you acted on the understanding reached at that pre-trial proceeding?

A. I feel that I am fairly familiar with what was laid out at that time, yes, sir.

Q. What was the aggregate number of applicants?

17,229 Well, I will speak of the Consolidated Explosives case, and I will speak of the case involving the applications of all of the other carriers other than Riss. Do we understand each other on that?

A. Yes, sir.

Q. Now, what was the aggregate number of applicants whose applications were consolidated in the Consolidated Explosives case?

A. In the Consolidated cases there were 59 or 60 applicants, depending upon whether you considered applications filed -- two applications filed by one carrier as separate applications, or whether you were considering them as separate applications.

Q. Now, by 59 or 60, you mean motor carrier applications other than that of Riss & Company?

A. Right; yes, sir.

Q. Now, what is the fact as to whether or not some of these applications were withdrawn by the applicants prior to the time that you and the counsel for the other railroad protestants concluded the presentation of your evidence applicable to the Consolidated Explosives cases and the evidence you presented in the Riss case?

A. Yes, sir, there were a number of applications withdrawn during the course of the proceedings prior to the close of the receipt of evidence in the Riss Sub 84 proceeding.

17,230

Q. And what was the date on which evidence in the Riss case applicable to the Consolidated case as well as the Riss case, at what time did you conclude that presentation of the protestants' evidence?

A. January 29, 1952.

Q. Now, how many of the 59 applicants for permanent explosives authority had withdrawn their applications by that time?

A. By that time there were a total of 40 had withdrawn.

* * *

17,230 Q. How many still remained in the case on that particular date when you concluded your evidence -- how many applicants?

A. When we concluded the presentation of the evidence --

17,231 Q. I am speaking of January 29, 1952.

A. -- evidence in the Sub 84 case, there were 44.

Q. Still remaining?

A. Still remaining.

Q. When, then, was the record finally closed in the Consolidated Explosives case?

A. The record was finally closed on February 28, 1952.

Q. And what was the date upon which the Examiner, when the Examiner issued his report?

A. April 24, 1953.

Q. And how many applications remained pending at the time the Examiner's report was handed down?

A. Twenty.

Q. Now, looking at this map, I notice that a number of States and the District of Columbia are colored in green. Will you explain what this means?

A. Yes, sir. Each State that is shaded green represents a State in which one motor carrier or more than one was seeking explosives authority to, from and between all points in that State.

Q. Now, I call your attention here that there are in each one of the States circles with a figure in it, that certain of the circles with the figures are in green.

17,232 Now, what do those represent, Mr. Steinbrecher?

A. The figures in green -- the numbers that appear in green in a circle represent States that were withdrawn --

Q. Applications?

A. Well, States that were withdrawn by reason of the fact that the application that included those States was dismissed or withdrawn by the applicant.

Q. Now, I want to be sure I understand you: Where the number "1" appears in Oregon, that means that there was one application that was withdrawn when?

A. It was withdrawn some time prior to the issuance of the Examiner's report.

Q. But it was pending on January 29th, 1952?

A. That's correct.

Q. In other words, there was one motor carrier whose application covered all points within the state of Oregon, whose application was pending on June 29th, 1952, but which was withdrawn prior to the issuance of the Examiner's report?

A. You said June.

Q. January.

A. It was January 29, 1952.

Yes. The irregular route authority that was pending for the transportation of explosives is reflected in those green-marked States on that map.

17,233 The irregular route authority that was pending on January 29, 1952.

Q. In other words, there was pending at the time the protestants concluded their evidence in the Sub 84 case, on January 29th, 1952, applications, one or more applications for irregular route authority to handle explosives to and from every point within the States colored green?

A. That's right.

Q. And how many of those States are there?

A. There are 35.

Q. 35 States? Will you check your notes? I just want to be sure we have the same figure. I could count it on the chart here.

A. Sorry; 33 States and the District of Columbia.

Q. Now I call your attention to the State of Washington and I notice that there is also a figure "1" in black, with a black circle around it.

What does that signify, Mr. Steinbrecher?

A. That signifies that that State was a State in which an applicant still sought to obtain irregular route authority to transport explosives at the time the Examiner's recommended report was issued on April 24, 1953.

17,234 In other words, all the way through the proceeding that State stayed in the application.

Q. Now, Mr. Steinbrecher, how many States were there in which one or more applicants for irregular route authority to serve every point within the State, remained pending at April, the date of the Examiner's report?

A. There were 28 states involved on April 24, 1953.

Q. And you don't want to forget the District of Columbia.

A. And the District of Columbia; yes, sir.

* * *

CROSS EXAMINATION OF MR. WILSON BY MR. LAYNE

17,260 Q. Mr. Wilson, you say you received some instructions of Mr. Cole, an attorney for the Pennsylvania Railroad?

A. Yes, sir.

Q. Did you know him as an attorney for the Pennsylvania Railroad Company at the time you received your instructions?

A. Yes, sir.

Q. Can you tell us the substance of the instructions that Mr. Cole gave you?

A. We were instructed to go south on Route 40, in the vicinity of Edgewood and Aberdeen, and to pick up any trucks carrying explosives, preferably the ones of Riss & Company, and Baggett, and possibly any others that might be carrying explosives.

Q. The fact is, of course, that Mr. Cole instructed you to pick up those primarily or preferably operated by Riss & Company, didn't he?

A. Yes, sir.

17,261 Q. And did he tell you what to pick up about the trucks operated by Riss & Company and to record on your cameras?

A. We were to film any violations that we could find them doing.

Q. Well, he told you what to look for, didn't he?

A. Well, we were instructed what to look for by Dominic NeCastro, most of the time.

Q. And who was Dominic NeCastro?

A. He was a railroad company employe.

Q. Well, he was a special agent of the railroad company, wasn't he?

A. I don't know how you refer to a special agent. As far as I know, he was a car inspector operating around the Maryland Division.

Q. And is Mr. NeCastro the man who drove the car while you operated the camera?

A. Yes, sir.

Q. And there were two of you in the car; one of them was a railroad man, and yourself, operating a camera?

A. Yes, sir.

Q. And did NeCastro tell you what to select, what was interesting to film? Did he suggest to you what portions of truck operations you should film when you saw a truck?

A. Yes, sir.

17,262 Q. And so you not only had Mr. Cole's instructions; you had on-the-scene instruction from Mr. NeCastro?

A. The name is NeCastro.

Q. I am sorry, NeCastro.

A. Yes, sir.

Q. Tell me, did you photograph every Riss truck that you saw?

A. Not every Riss truck; only the ones carrying explosives placards.

Q. Did you photograph every explosives truck that you saw of Riss & Company?

A. To my recollection, yes.

Q. Did you photograph them during the entire time you saw them?

A. No, sir.

Q. You selected the times when you would run your camera and when you wouldn't?

A. Well, when we say them -- if we saw them doing anything, exceeding the speed limit, NeCastro would say: He is exceeding the speed limit; start the camera.

Q. So that when we see the film -- if we do finally see the film -- we will see those portions that you took at the times that Mr. NeCastro thought it would be interesting to run the camera?

A. Yes, sir.

17,263 Q. So that while it may not have been cut, while the film may not have been cut, the camera was cut, wasn't it?

MR. McGLOTHLIN: I object to that as argumentative.

THE COURT: Just ask him if he knows.

BY MR. LAYNE:

Q. Tell me, don't you know, as a fact, Mr. Wilson, that you shut off the camera and didn't use the film when there was something happening that you didn't want to record?

A. That wasn't the point. The reason why we have to cut the camera is, first of all, we have to change film; and secondly, if we kept the camera running, we would wind up with a couple of million feet of film, which would be impossible to go through and select stuff.

Q. That is right. That is exactly what it would do, Mr. Wilson. It would give us a lot of film that we would have to see where the trucks were doing something --

MR. McGLOTHLIN: May I object to the speeches, Your Honor. This isn't a question.

THE COURT: This is cross examination.

MR. McGLOTHLIN: It is not cross examination. It is argument.

MR. LAYNE: I will reframe the question.

THE COURT: Reframe the question. Let's not argue.

17,264 BY MR. LAYNE:

Q. Then in order to get the selected portions that would be interesting on the film, you operated the camera sometimes and sometimes you didn't?

A. Yes, sir.

Q. Now, you say you were out ten days on the road.

A. Approximately ten days.

Q. How long during the course of the day were you out there?

A. A good many of the days, I reported as early as six o'clock. We got on the road; we would arrive around Edgewood at 8:00 a. m.; and many was the day, out of those approximately 10 days, that I wouldn't get home until about nine, ten, eleven o'clock at night.

Q. You would say you spent at least twelve hours on the road each of those days?

A. Approximately.

Q. Now, you say that sometimes you operated the camera at twenty-four frames per second, and sometimes at thirty-two frames per second, and that was your view of what would make the best film to show what was actually happening to someone later seeing them?

A. Yes, sir. It is a common practice in the motion picture industry, whenever you are photographing from any car or airplane, where the cameraman, himself, is being jostled around, to be able to let the people
17,265 who are viewing the picture see a better image, you would run the camera at a faster speed; when it is projected at normal, it will give you a slow-motion effect, thereby the bumps that you would receive would be smoothed off.

Q. So it is a technique to make a better film and one better to be seen than would otherwise be taken if you took it at the normal operating speed of thirty-two frames per second?

A. Twenty-four frames per second.

Q. Twenty-four frames per second.

A. Yes.

Q. Now, to what extent, can you tell us, after the films were processed, the negatives were processed, that portions were cut out? Were there any portions cut out?

A. The only portions that were cut out, to my knowledge, would be anything that would be jiggled, too jiggly, that would be just useless to look at; you wouldn't be able to see anything. And there is always normal leader and trailer on every roll of film that we shoot that has to be cut off and thrown out, to protect the majority of the film.

Q. So then, as I understand it -- so that I and the Jury can understand it -- where the film taken was not of a good quality, where it jiggled too much to see it, you cut that out?

17,266 A. Yes, sir.

Q. And you cut out what you call the leader portion of the film?

A. Yes.

Q. And you cut out the trailer portion, you said?

A. Yes, sir.

Q. That is so it could be spliced together?

A. That is correct.

Q. In other words, it was necessary, in order to splice it, to make some cuts in the film?

A. Yes, sir.

Q. And those cuts were made in the silent version, at least?

A. Yes, sir.

Q. Now, you have before you not a silent version but a more modern production, a sound film, haven't you?

A. Yes, sir.

Q. Now, do you know when that was made?

A. Off hand, not exactly.

Q. Well now, let me help you. Mr. McGlothlin has referred to your testimony before the Interstate Commerce Commission, and I happen to have a copy here of your testimony.

Do you recall that you testified before the Commission on January the 8th, 1952?

17,267 A. Yes, sir.

Q. Was the sound film made at that time?

A. Prior to that time.

Q. It was made prior to that time?

A. To my recollection.

Q. Did you make it?

A. I didn't make it myself. I made the silent footage, which was incorporated into the film.

Q. And you recall that was what was offered at the Interstate Commerce Commission? A. Yes, sir.

Q. Now, did your firm make the sound version? A. Yes, sir.

Q. There was a reference to the fact that there was a sound version. Do you know whose voice it is?

A. Mr. Wickes'.

Q. And that had been made prior to your testimony, you say, before the Interstate Commerce Commission?

A. As far as I know, it was.

Q. On January 8, '52.

A. As far as I know, it was.

Q. As far as you know, it was. The sound version that you have before you, is that all of the silent pieces put together?

A. Not all of the silent pieces.

17,268 Q. Not all of the silent pieces.

When you testified before the Interstate Commerce Commission, you had at that time -- there may be one piece that is mislaid since -- the separate rolls of each roll of film that you had taken?

A. Yes, sir.

Q. In making the sound version that is before you, were those silent versions put together, pieced together?

A. Yes, sir.

Q. Who selected in what order they would be shown?

A. That I am not sure. Of course, my job is a cameraman. I am out on the street traveling all the time, and what goes on back in the laboratory, I can't recollect.

Q. Who selected what pieces of the silent version would be put into the sound version?

A. That, I cannot say.

Q. Now, you say Mr. Wickes gave the commentary. Were you asked to give any commentary?

A. No, sir.

Q. Your voice is not on the film?

A. No, sir.

Q. You didn't read your notes? If we heard the sound version, it would not be you reading your notes, for example?

A. No, sir.

Q. Now, did you take, Mr. Wilson, any film, or are you the photographer that took a portion of film, any portion of film at a truck stop outside of Baltimore of trucks parked at a filling station or gasoline station?

17,269 A. Yes, sir.

Q. And was Mr. NeCastro with you at that time?

A. Yes, sir.

Q. Did you, personally, approach the operator of that station with respect to taking film?

A. No, sir.

Q. Did Mr. NeCastro do so?

A. I don't believe so.

Q. You don't believe he talked to him? A. No.

Q. Were you with him at all times?

A. Not at all times.

Q. Did you hear any conversation between Mr. NeCastro and the filling station operator?

A. No, sir.

Q. Are you aware that a man who operated the filling station testified before the Interstate Commerce Commission?

A. I wasn't aware of it. At least, I don't recollect it.

Q. You are not aware that any such --

A. No, sir.

Q. At any time after you had taken a sequence of film or pictures of trucks parked at a truck stop outside of Baltimore, on Route 40, were you aware of any police activity with respect to your vehicles?

17,270 A. No, sir.

Q. Were you ever aware that the police were following your vehicle?

MR. McGLOTHLIN: Your Honor, he has testified he was not aware of any police activity. It can't be elaborated by further informative questions.

THE COURT: Have you got anything other than just reframing the question?

MR. McGLOTHLIN: Yes, sir. He has already been asked, did he know of any police action; he said, no.

THE COURT: You said you were not aware of any police?

THE WITNESS: Yes, sir.

MR. McGLOTHLIN: That seems to me to finish it.

THE COURT: All right, let's proceed.

BY MR. LAYNE:

Q. When did your organization turn over the sound version of the film, if you know?

A. I have no recollection of that specific time.

Q. Do you know to whom it was turned over.

A. Accurately, no. It would possibly be to one of the -- either Mr. Wickes or Mr. Cole.

17,271 Q. During the course of the ten days that you were doing this operation, and at any time during the processing of the film subsequently, did you discuss the matter with Mr. Wickes?

A. The matter pertaining to what?

Q. The matter of the film.

A. Well, we had discussions from time to time as to what he would like to have on the film.

Q. Mr. Wickes indicated what he would like to have you take, too?

A. Yes, sir.

Q. So that you got instructions from Mr. Wickes, Mr. Cole and Mr. NeCastro?

A. Yes, sir.

Q. Now, did you report, at the conclusion of a day's work, to Mr. Cole or Mr. Wickes as to the progress that day?

A. Not me.

Q. You did not?

A. No, I did not.

Q. Did someone in your organization, to your knowledge?

A. No, sir.

Q. You don't know?

A. No, I don't know.

Q. All I am asking you is, if you know, did someone or someone not; or do you know?

17,272 A. NeCastro would be the man to do any reporting and there was no reason for us to do any.

Q. I see. Now, was there another cameraman of your organization employed in making the film?

A. Yes, sir.

Q. The version that is before you, does it contain only film taken by you?

A. No, sir.

Q. There was another cameraman?

A. Yes, sir.

MR. LAYNE: I take it that is the next witness?

MR. McGLOTHLIN: That is correct.

BY MR. LAYNE:

Q. Did you ever operate, both of you, in the same vehicle, two cameramen together?

A. I don't believe so.

Q. So that so far as you are aware, there were two vehicles operated and taking pictures during this period of time?

A. No, sir.

Q. The other operation was at a different period of time?

A. Any time the other cameraman would be in was when I couldn't go.

Q. When you could not go?

17,273 A. Yes, sir.

Q. Over what period of time were the films taken? You said you were out on the road ten days. What period of time was involved all told in the taking of these films?

A. Well, to my recollection, about a month.

Q. How did you select the ten days that you went out?

A. That I personally went out?

Q. Yes.

A. Well, as usual, I report to work every morning, and I am instructed as to what my job would be. And in this case, if they wanted to operate this specific day, if I was available, I went; if I was not available, the other cameraman would go.

Q. So the particular day you went was a day that had been selected and you were instructed to go that particular day?

A. Yes, sir.

Q. You didn't go ten days in a row?

A. No, sir.

* * *

17,286 CROSS EXAMINATION OF MR. SPIELLER BY MR. LAYNE

Q. Mr. Spieller, did I understand you correctly, the driver of the vehicle from which you operated this camera was Mr. NeCastro?

A. Yes.

Q. This is the same Mr. NeCastro who was identified by Mr. Wilson, and you heard his testimony?

A. Yes.

Q. Mr. NeCastro was identified to you as an employee of the railroad, was he not?

A. That is right.

Q. And did you get instructions from Mr. NeCastro as to what sequence or what truck operations you should photograph?

A. Yes.

17,287 Q. He told you when to start the camera, now, and stop the camera now?

A. Well, most of the time, you use your own judgment.

MR. McGLOTHLIN: I would like to have the answer read.

THE COURT: Read the answer.

(The answer was read by the reporter.)

BY MR. LAYNE:

Q. I thought you just told me you got instructions; most of the time Mr. NeCastro said start the film now, is that what he said?

A. No, not in those words. I might have stopped before he said, I could use my own judgment, and then he would say take that and sometimes I already did.

Q. Sometimes he told you you'd better take that one?

A. Yes.

Q. Now, did you get any instruction from any other railroad officials as to what you should look for and what you should photograph, so that you would be able to exercise judgment?

A. I don't recall right now.

Q. Does the name Mr. Cole, Mr. Basil Cole, ring any bells with you?

A. Yes.

Q. Did Mr. Basil Cole give you some instruction as to what sequences and what operations he wanted photographed?

A. I don't recall.

17,288 Q. You do not. Does the name Mr. Wickes ring a bell to you?

A. Yes.

Q. Do you recall whether he gave you any instructions as to what sequences or what operations to photograph?

A. I don't remember right now.

Q. Did you choose Route 40 to operate in or was that a choice of Mr. NeCastro?

A. That was Mr. NeCastro.

Q. Mr. NeCastro chose the areas in which the car would be operated?

A. Yes, sir.

Q. Now, in the case of the film that you have identified here, I notice, for example, there is a title on one that is called "Gentleman Jim" which was referred to in the identification, Mr. McGlothlin gave that. Is that a title that you put on there?

A. No, I didn't put the title on.

Q. Who made up the title "Gentleman Jim"?

A. I don't know.

Q. Who made up any of the other titles that I see on this?

A. I don't know.

Q. Now, did you participate yourself in the production of that sound version that is before you?

A. No.

Q. Did you participate -- are your words on the sound track?

17,289 A. No.

Q. Can you tell us whether or not what has been identified here as being photographed by you, was all of the film that you took?

A. No.

Q. It is not all of the film?

A. Not on here.

Q. Not on there. Who, if anyone, do you know, decided what would be put on the sound film that was on the silent version?

A. I don't know who did it.

Q. Who decided what would be left off, if you know?

A. No, I don't know.

Q. Now, with respect to the exhibits of the silent film that we have there, does that represent all of the film that you took during the period of time that you were on this assignment?

A. As far as I know, yes.

MR. McGLOTHLIN: Let me say I stipulated there is one can missing, Can B, and it is not here, we don't know where it is.

THE COURT: Can B, is that it?

MR. McGLOTHLIN: Can B and Mr. Spieller, I believe took that one, I believe.

BY MR. LAYNE:

Q. So that there is apparently, one of the cans of film that you took missing?

17,290 A. That is right.

Q. Can you tell me whether or not each of those cans represents a day's activity or can we divide it that way, so that if there were four cans, we know you took film on four days, or does it mean that there is more than one day's production on a film or on a can of this silent film?

A. No, it can't be one day's production on each reel because sometimes we would have film left in the camera, we wouldn't take it out, we knew we were going back the next day.

Q. So that one of these films, cans of silent film, may contain more than one day's shooting?

A. That is right.

Q. So that you took a sequence and you stopped the camera, and then you start it up again at a subsequent time; sometimes, in photographing the same truck, did you stop the camera and start it up again?

A. Oh, yes.

Q. Now, were you operating with Mr. NeCastro on the date of December 28, do you know?

A. No.

Q. You were not?

A. That is right.

Q. Did you photograph or is your film the film that had a sequence of a truck at a truck stop or filling station on Route 40, that was photographed, do you recall?

17,291 A. I don't recall that.

Q. Do you recall Mr. NeCastro having any discussion with the operator of a filling station concerning taking of films by you and in conjunction with Mr. NeCastro?

A. No, I don't.

Q. No discussion of any kind?

A. No.

Q. Do you recall any time, in the operation on Route 40, in which your vehicle was the subject of police activity?

A. No.

Q. Who spliced together the film that is in the cans, the silent version there?

A. I don't know.

Q. You don't know. Someone in the Laboratories, as far as you know?

A. That is right.

Q. And it would be essential or necessary in that operation for there to be some of the film cut off, wouldn't there be?

A. Not necessarily.

Q. Not necessarily?

A. That is right.

Q. Well, let's find out whether you know if any was?

A. No, I don't know that any was cut off.

Q. Do you know whether any of it was cut out for technical reasons or otherwise?

17,292 A. No, I don't know if any was cut out.

Q. Do you know whether you photographed every truck that you saw?

MR. McGLOTHLIN: Are you referring to the trailer-truck combination?

MR. LAYNE: Yes.

THE WITNESS: No, I didn't photograph every truck.

BY MR. LAYNE:

Q. Do you know whether you photographed every truck transporting explosives that you saw?

A. Yes.

Q. You think you did? A. Yes.

Q. As you sit there now, you think you did? A. Yes.

Q. Were the five days that you spent on the road, five consecutive days?

A. No.

Q. Do you know how they were selcted, the five days?

A. Well, I would go out if Mr. Wilson didn't go out, if he had another assignment, I was sent out.

Q. Well, Mr. Wilson tells us he went out fifteen -- ten days and you went out five.

A. That is right.

17,293 Q. And in all, Mr. Wilson tells us that this period of time covered something like thirty days.

A. That is right.

Q. Well, were the fifteen days consecutive days?

A. I don't know.

Q. You don't know? A. No.

Q. But in any case, your five days were not consecutive days?

A. That is right.

* * *

17,318

Q. Now I call your attention to the next subparagraph on page 3 of Plaintiff's Exhibit 41-E. But before I ask this question, did you know Mr. Hays and Mr. Nisbet before your assignment to the Sub 84 and the consolidated explosives cases?

A. Yes, I did.

Q. Had you worked with them as co-counsel representing protestants in previous applications?

17,319 A. I had, yes, sir.

Q. And what was your relationship with Mr. Hays and Mr. Nisbet in the handling of the Sub 84 case?

A. It seemed to me to be co-counsel. I was a member of the legal team, if you want to call it that -- co-counsel with Mr. Hays.

Q. Now there were other lawyers associated with the three of you in representing the various aspects of the western railroads' evidence? Is that correct?

A. Yes, sir.

Q. But the major portion of the work was borne by the three of you; is that correct?

A. By whom, sir? I am sorry.

Q. By the three -- Mr. Hays, Mr. Nisbet and yourself.

A. Well, I think so. There were a number of others who participated in it. But I think, with respect to the legal representatives of the western railroads, Mr. Hays, Mr. Nisbet and myself were in attendance at more of the hearings than anybody else, more of the sessions, and were more active.

Q. As a matter of fact, how many of the hearings did you attend, Mr. Steinbrecher?

A. Oh, I was in attendance at all of the hearings, and was in attendance at practically every day's session. I wasn't in attendance all day
17,320 every day; but it seems to me I can't recall having missed any day.

Q. Did you present some of the evidence on behalf of the western railroads? A. I did.

Q. And did you bear your share of cross-examining the witnesses, the other witnesses put in by the parties?

A. Well, I don't know what my share would have been; but I certainly participated in cross-examining witnesses and examining witnesses on direct.

Q. Quite extensively, in fact? A. Yes, sir.

* * *

17,336 BY MR. BALL:

Q. Mr. Steinbrecher, were Mr. Wickes or Mr. Masterson members of the Defense Committee for Western Lines?

A. No, sir, not Western Lines.

Q. Were they members of any defense committee to your knowledge? A. Yes, sir.

Q. And what was the name of that Defense Committee as far as you know it?

A. Eastern Territory Railroads Defense Committee.

Q. When you were assigned to this Explosives case, did you make an effort to become acquainted with what had taken place and been done already in preparation for the case?

A. Oh, yes, sir, part of the assignment.

Q. In the course of the proceedings, Mr. Steinbrecher, in MC-200 Sub 84, you and other counsel for protesting railroads introduced evidence attacking the fitness of Riss & Company to be granted authority to transport explosives, didn't you?

A. Yes, sir.

Q. Do you know of any other case in which such attack of the fitness of common carriers has been made?

A. Yes, sir.

17,337 Q. Do you know of any other cases in which such an attack has been based upon alledged violations of State laws or the safety record of the carrier? A. Yes, sir.

* * *

17,357 Q. Now, Mr. Steinbrecher, in the proceedings MC-200-Sub 84, did Riss & Company introduce the certificates establishing its temporary authority under MC-200 Sub 60 TA? Did it introduce the scope of its temporary authority in Sub No. 60 TA?

A. Yes, sir, it introduced all of its certificated equipment.

Q. Did Riss & Company also introduce evidence showing the amount of explosives it had transported for the Defense Department to and from the points which it was seeking permanent authority to serve?

A. Yes, sir.

Q. Did this evidence introduced by Riss & Company raise any question in your mind as to whether it was serving points not within the authority granted in Sub 60 TA? A. It did.

17,358 Q. How did this fact become apparent to you, Mr. Steinbrecher?

A. In the exhibits presented in support of the application in the Sub 84 case, the abstracts of the shipments, that is to say, the lists showing the movements, showed the commodity, the bill of lading or the freight bill number, as I recall, and it showed the commodity and it showed the weight and it showed the points between which the shipments moved.

Q. And did you compare those points with the authority shown in the Sub 60 TA authority? A. I did.

Q. And what did that show to you, in your opinion?

A. It showed in my opinion Riss had been transporting shipments under its so-called temporary authority in excess of what I felt the Commission had authorized.

And when I say "I," I was not the only one examining in this, if I may be permitted to add that.

Q. And when this fact became apparent to you did you discuss what to do about it with Mr. Hays and Mr. Nisbet?

A. Yes, sir.

Q. Did you?

You pulled away from the mike and I didn't hear you.

A. Yes, sir.

17,359 Q. Did you also discuss what to do about this matter with Mr. Wickes and Mr. Masterson, or the members of the Eastern Committee?

A. Yes, sir.

Q. What was then done by you -- or by you and others?

A. A careful study was made of every shipment and detailed records made of the extent of the operations in excess of the temporary authority that we felt that Commission had given Riss in 1946.

Q. Then what did you do?

A. On the basis of the excessive operations we drew up a petition for Riss to cease and desist -- to require Riss to cease and desist operations in excess of the legally granted temporary authority routes.

Q. And was this petition filed? A. It was, sir.

Q. And was your name on this petition?

THE COURT: Excuse me, Mr. Steinbrecher; would you give me the date of that petition you are talking about?

THE WITNESS: Yes, sir.

THE COURT: What date was it?

THE WITNESS: It was filed on February 27th.

It was dated February 26th but we didn't get to present it or file it in the Commission until February 27th, 1952.

17,360 THE COURT: Thank you.

BY MR. BALL:

Q. And what was the date that the hearings in the Consolidated case were closed?

A. The Consolidated cases closed on February 28, 1952.

Q. The day after this petition was filed? A. Yes, sir.

Q. And the evidence that you had presented in the Riss case, Sub 84, was concluded on January 29, 1952?

A. Yes, sir, but I believe that Riss did present some rebuttal witnesses on the last day of the hearing.

Q. Now, was your name on this petition, Mr. Steinbrecher?

A. It was.

Q. Do you recall whose names were on that petition?

A. Yes. Mr. Masterson, Mr. Nisbet, Mr. Wickes, and myself. Four of us.

Q. And the petition was filed on behalf of the members of the Western Defense Committee and the Eastern Defense Committee generally -- does that speak -- well, the record will speak for itself, if the Court please. I think that is it. I don't want the witness to generalize.

BY MR. BALL:

17,361 Q. Did you or did you not report this matter to the Santa Fe Railroad? A. Yes, sir.

Q. Did you or did you not -- A. I did report it.

Q. What is that?

A. I said yes, but I think I should say I did report it, yes, sir.

Q. Do you know of any report made to the officials of the railroad whom you represented in the Sub 84 proceedings?

A. I am not clear as to whether there was such a report made generally or whether I made such a report to all of them.

Q. Is it possible you filed this petition acting on your own authority as you conceived it in the Sub 84 case?

A. Well, my view of it was that it was a part of the Sub 84 proceedings, or a part of the Sub 84 defense.

Q. What was your purpose in joining in this petition for interpretation of Riss authority in Sub 60 TA?

A. It was to require -- it was two-fold:

To require, first of all, Riss to carry on its operations in accordance with its legally granted or properly granted operating authority; and

17,362 Secondly, it was to advise the Commission that Riss' operations, to the extent they exceeded that authority, were illegal, and therefore should not be considered in any sense as supporting the Sub 84 application.

* * *

17,372 Q. I merely want to ask you, Mr. Steinbrecher, one or two questions about this chart:

Can you tell me what points Baggett was given authority to serve that it did not have temporary authority to serve before the grant of this authority?

A. Yes, sir. They were given authority to serve over the red lines as new authority in 1955, between Crane and Hingham, for example and between Crane and Earle.

Q. Do you have the date that that was granted to them?

A. Yes, sir. April 25, 1955.

Q. In other words, Bagett was granted by the Interstate Commerce Commission authority to transport explosives between Crane and Hingham and between Crane and Earle, although he did not have any temporary authority or was not in fact transporting such explosives in the period immediately prior to the grant of this permanent authority?

A. That's right.

* * *

17,387 STATEMENT OF COUNSEL TO THE COURT BY MR. McGLOTHLIN

MR. McGLOTHLIN: The counter claims charge a combination and conspiracy between Riss and other motor carriers to do three things:

Let me say at the outset, however, before I talk about the factual allegations, the legal situation:

These counter claims are filed under Section 1 of the Sherman Act, and Section 2 of the Sherman Act.

Section 1 of the Sherman Act makes unlawful restraint of trade.

Section 2 of the Sherman Act makes unlawful monopolization or attempts to monopolize.

Now, the charges made are of an unlawful combination and conspiracy between Riss and other motor carriers:

(a) "To injure and destroy the competition of this defendant and other rail carriers in the transportation of property in interstate commerce of the United States."

That, I will suspect, reads on both Section 1 and 2, Your Honor.

Second, to monopolize such transportation.

That is a pure Section 2 charge; and

17,388 (c) "To fix prices for such transportation;"

which is a pure Section 1 charge, a restraint of trade.

The pleading continues and says that:

"In furtherance of the combination and conspiracy, Riss and other motor carriers acted together, established joint rates for the transportation of property" --

Not just ammunition and explosives, but of property --

"-- for the United States."

And then it says:

"-- particularly ammunition and explosives, at unreasonably low levels, and that the intent was for the purpose of diverting to itself and other motor carriers all such transportation of the United States."

Then there are allegations of public injury and a direct allegation of unlawful action of damage by diverting from it profitable traffic that would otherwise have obtained and reducing the revenues that it did perform.

Then there is a jurisdictional allegation as to amount.

Now, that is the problem as I understand it.

* * *

17,395 Now, what does "per se" mean? "Per se" means you can't say it is no defense to say that the prices I fixed were reasonable.

17,396 THE COURT: It means in and of itself, doesn't it? That's what we all understand it means.

MR. McGLOTHLIN: That's right. It means it excludes any necessary proof of intent. There is no need for intent to prove monopoly, there is no need to prove intent to exclude others. There is no need to prove power to exclude others.

Those are all Section 2 matters under the Sherman Act.

Now, there is just no escape in this District from that rule.

Now, because of that, Your Honor, we do not intend to try to prove monopoly or intend to try to prove exclusion of competitors as a necessary part of our case.

I do not say that some of our proof may not bear on that, but it is not a necessary part of our proof.

* * *

17,405 THE COURT: Now let me ask you this question, and maybe you have an answer to it:

Even though you are not going to show what all of these alleged conspirators haul or how much traffic they hauled, you have got this information which you are going to rely on 37 to 37-C.

Why should not the Court and the jury have the benefit, at least, of knowing exactly how much you hauled between the points set forth in 37 to 37-C by the plaintiff, the cost, the profits, et cetera?

That would not be a Herculean job. I mean, they did it, and I don't know why the railroads couldn't do it.

MR. McGLOTHLIN: Because it is immaterial.

THE COURT: I think it might be material.

How do we know that you didn't get a lot more tonnage than you indicate you would have gotten? How do we know that unless we have those figures?

17,406 MR. McGLOTHLIN: You don't know it, but again it's immaterial.

THE COURT: Why?

MR. McGLOTHLIN: Because if there's an illegal action, a violation of the anti-trust laws, that injures us by taking traffic away, we are injured, and it doesn't make any difference whether we are the corner grocery, or Standard Oil of New Jersey. The laws of the United States say you are entitled to recover at treble your damage.

THE COURT: Wouldn't it go to show whether or not you are actually injured, showing the amount of traffic you hauled?

MR. McGLOTHLIN: Not if we show that the traffic was diverted from us, because then we have shown the injury.

* * *

17,417 BY MR. BALL:

It is a perfectly proper matter for a person injured by a conspiracy to elect to sue one, even though it would be perfectly feasible in the same District to sue a dozen of the conspirators.

THE COURT: I understand.

MR. BALL: Nor do I think any inference from the failure to sue more can be drawn adverse to the plaintiff.

Now, in this the facts might even be more against us if we attempted to increase the burden of proof by proving the damage that the other conspirators created -- I mean that the action of the other conspirators did in connection with the conspiracy contributing to our injury.

But I am sure that the Court would not think that there is anything reprehensible in trying to narrow the issues and keep this within a triable, feasible form.

THE COURT: I understand.

All right, Mr. Holt.

MR. HOLT: May it please the Court:

I think Mr. McGlothlin inadvertently misspoke when he

17,418 said I would give you the whole outline of our evidence. Mr. Flynn and I have divided between us an outline of the evidence on which we propose to rely.

I will describe the evidence we propose to put in to show the existence and the nature of a price-fixing conspiracy and the general course of conduct extending over many years among the motor carriers doing Section 22 business, to suppress price competition among them.

Mr. Flynn will then discuss the evidence and method of proof which will be used in showing the damages suffered by each counter claimant by reason of this conspiracy.

I have prepared a book of documents of the general type on which we will rely in presenting our case. These are just Verifax copies, Your Honor, and some of them are not very clear, and I regret to say that a few of them are negatives but I think they are satisfactory for this morning's purposes.

* * *

17,420 The second document, Document No. 2, takes us back to 1947.

THE COURT: '47?

MR. HOLT: '47, yes, Your Honor, and gives us the first articulation of the possibilities of using the Government routing policy -- of motor carriers using the Government routing policy to get a substantial amount of Government traffic and still keep the rate up.

You will notice the second sentence -- this is a memorandum from Mr. Rhodebeck, a Vice President of Riss, to Mr. Stone, who I believe at that time was Director of Traffic, and later Vice President.

Mr. Rhodebeck points out:

"As I explained the only way we can get anyof the Army traffic in Middle Atlantic territory is by doing this which puts us on a par generally with rail. His office" --

17,421 That's the War Department --

" -- will check our rate vs rail before routing any shipment in this area and if we are 1 cent lower we get all the movement if on a par with rail it will be split and if we are 1 cent over rail we get none. The proposed quotation has the effect of making column 2 rates applicable in tables A, B & C of master tariff 5 of Warings."

Warings, I would like to point out, Your Honor, is the Middle Atlantic Conference.

Document 3 follows up Document 2. Mr. Rhodebeck seems to have had some difficulty at first persuading the other carriers in the Waring's Bureau to go after this traffic. It points out in the first paragraph:

" -- since most of Waring's rates are above rail we can only hope for the crumbs."

The second paragraph:

"Then to be on the up and up I told the Waring bureau what I was proposing to do and they thought an atom bomb went off. I told them because they had been nice enough to clear with the carriers all Section 22 quotations they can, which are made by other truck lines" --

17,422 Then it goes on and asks Mr. Stone to prepare Section 22 quotations for Government offices listed below, and then on the next page, and concludes in the last paragraph of the letter on the third page that:

"Warings office just called and said they were calling a meeting of the carriers at the Governor Clinton Hotel NYC 9:30 AM February 11th to discuss government rates, etc., and would I be present. I expect to be there and take their abuse."

As this indicates, Document 4 did seem to show that Riss & Company had a temporary setback in persuading other carriers to join in this effort.

The middle of that paragraph on page 4, Mr. Rhodebeck points out to Mr. Stone that "they want one general quotation to come through the bureau of the Middle-Atlantic Territory. They have it that way in other territories, especially the South, and I saw the files where the War Department handles quotations with the bureau for account of any or all carriers who want to participate. The War Department appreciate our fight for uniformity."

Document 5, which is not a direct response to the preceding, indicates that Stone accepted Rhodebeck's policy of using rate bureaus:

"We will go along" he says in the second paragraph "with the quotation of rates on the government freight through the bureaus, including Waring's."

17,423 Document 6 takes us to October of '47, and it would appear that by that time the other carriers have come around to the idea and are somewhat resentful of Riss' lower rates.

Mr. Rhodebeck says to Stone:

"As it stands we have two quotations in effect and 101 is the lower, and very embarrassing when I try to tell the other lines we are on a parity with them, in 70. They say, "Oh, yes, what about 101?"

The next instance, which does not operate through a rate bureau, takes us into 1949 and we see the spirit of cooperation increasing on government business.

Document 7, again Mr. Rhodebeck to Stone:

"Regarding section 22s on Government post cards.

"I was discussing these rates with John Reimels eastern traffic manager for Interstate Motor Freight System. We would like to see these rates raised but John and I agree that if our respective companies raise the rates and the others do not we just will not haul any post cards.

"He asked me to write you and ask if you or Hester" --

I might point out to Your Honor that Mr. Hester whose name will appear frequently, was, I think, Mr. Stone's assistant at this time and later became Director of Traffic.

17,424 " -- you or Hester, whoever attends the next Eastern Central rate meeting, would contact Mr. George Shook, Traffic Manager of Interstate and discuss the matter with him. Roadway, Schreiber and other conference carriers have quotations same as we and

Interstate have so perhaps a general informal discussion around the table at the meeting might help."

Document 8, Hester responds and says:

"This matter was discussed with interested carriers present and it was the opinion of carriers that the future individual quotations should be on" --

And it gives a rate basis.

" -- however, it would be useless for those holding that opinion to file such a proposal unless this basis was universally adopted."

The same story picks up again three months later with Document 9, from Shook of Interstate, who sent a round robin letter saying:

"You will recall the little get-together we had at the May meeting of the Bureau held in Cleveland, Ohio, regarding the increasing of rates quoted under Section 22 on Government Post Cards. I made known at the time rates we have quoted and it was expressed by one or more of those present that it was their desire
17,425 to check rates that have been competitively quoted and on file."

10 is a reply to the proceeding:

Shirks writes to the group saying he has found that:

"I find that Schreiber Trucking Company is handling a considerable volume of this traffic and I believe that it would be necessary to obtain their views before new quotations are issued.

"We are still anxious to see the rates on government postal cards increased and in the event that Schreiber's concurrence is not obtained we would be willing to increase those rates to points where Schreiber does not operate directly."

Hester in No. 11 points out that he had understood that:

"Someone in the Eastern area was to contact Schreiber and obtain his views relative to this adjustment."

No. 12, which is a negative document, and I trust is legible in Your Honor's copy before you, gives us an indication that by late 1948 the rate bureau technique of rate manipulation was popular in the Southwest.

Mr. Adams, the Traffic Manager of Central Freight Lines, writes to Stone and says:

17,426 "We are thoroughly sold on handling our rate quotations to the Government through Mr. J. D. Hughett."

Mr. Hughett was an official of the Southwest Motor Freight Bureau.

" The benefits to us in additional tonnage from the Government have been great and we have been advised by the Traffic Control Section of the Army that this method is much preferred as it is more simple to determine the quotations on file. We have no hesitancy in saying that Mr. Hughett will see that the tariff will fully protect you regardless of origin or destination. In addition, Mr. Hughett is frequently in contact with these officials so that he is better prepared to keep abreast of their needs and we think that his action in the past has shown that in many instances he was able to determine information which enabled us to avoid filing quotations any lower than absolutely necessary."

The next group of documents, in early 1949, show the Middlewest Motor Freight Bureau getting Section 22 business. The Middlewest and Rocky Mountain were the two most significant rate bureaus as far as Riss was concerned, according to the evidence available to us, and to a lesser degree Southwest.

17,427 Document 13 is a letter from the Manager of Middlewest, first suggesting to all the members the centralization of Section 22 quotations through the Bureau.

About the middle of the page it refers to a representative of the Department of the Army who met with him and some carriers, who stated that:

" -- upon adoption of the plan by the motor carriers, future quotations to those governmental organizations would not be accepted until they were cleared through this association. This means that, altho one of our members sent a quotation direct to the Department of the Army or to the Air Forces, such quotation would be returned to this office for clearance and publication for the account of all competitive carriers desiring to join in it. Moreover, copies of all quotations now on file with the Army and the Air Forces will be sent to us by the Washington office for such action.

"We should like to know whether or not any member line has any objection to this proposed procedure. If objections are not expressed to us in writing by March 15th, 1949, this office will publicize by appropriate bulletin to the membership, all Section 22 quotations which have been received by us from the Department of the Army by that date; prepared to publish such quotations for all carriers desiring to participate therein, and establish a procedure
17,428 for similar treatment of any future quotations or rate tenders to
the Army and the Air Forces."

"In Docment 14 Riss through Stone responds to that 'they are heartily in favor of all quotations being published through Bureaus, and will cooperate with you to the fullest extent.'

It's interesting to note, Your Honor, that according to the answers to the interrogatories the plaintiff served, about a year ago Riss joined the Midwest Motor Freight Bureau, on February 26, 1949, which is two days before the date of the form letter given in Document 13 and perhaps had no need for this bureau where it dealt with Section 22 business.

Document 15 simply continues the preceding quotation, the preceding documents, and shows the Bureau proceeding to collect the information together and to prepare the proposed big tender.

And in Document 16 Riss replies to the preceding, pointing out that the power of attorney has already been furnished to the Bureau.

Document 17 continues beginning with the Middlewest entry into Section 22 business, pointing out in the second paragraph that:

"The attached list of quotations" -- which is not attached to this book --

17,429 " -- is being publicized in accordance with previous notices and publication will be made for the account of the quoting carriers and for the account of any other motor carrier who so instructs us and who has executed a Government Quotation Power of Attorney in favor of this association."

This, in other words, is simply a pooling among the members of the Association of all their quotations, giving everyone an opportunity to participate on an equal basis, as is shown by the next paragraph which begins,

"If any carrier desires to meet the quotation of another carrier, please let us know immediately."

You will see from a document later that sometimes to the motor carrier traffic people the word "meeting" has an odd connotation.

Document 18 is simply a reply to No. 17, and Document 19, now into October, shows that the Middlewest decided to expand its big publication to cover interterritorial as well as intraterritorial rates.

Turning to Document 20, it is stated that by January, 1950, the big Middlewest publication given the name "Tariff No. 303" --

Of course, Your Honor, it is not a tariff in the technical sense, such as the Section 22 Government quotation -- has been published and Stone has had a chance to check it out.

17,430 It is indicative of the value of Bureau publications in letting everybody know what the competition is up to, and getting everything on a standard basis.

As Your Honor will see from the third and fourth paragraphs where Stone points out that:

"You are doubtlessly aware that the normal rating for explosives with a 20,000 pound minimum is 75 per cent of first.

"I don't know what

"I don't know what the Bureau may want to do about this but in the interest of conserving carrier revenue perhaps you might want to suggest to these lines that Items 110 and 120 be corrected to the standard basis."

The next page, the last sentence of the letter:

"When you get around to it possibly a meeting of the carriers, party to 303, might bring about some desirable changes."

Your Honor will recall that our first documents dealt with the beginning of the rendering rates uniform and getting them up, still remaining just below the railroads in the Middle Atlantic Conference.

Document 21 shows us that by 1949 that conference was very conscious of uniformity indeed. It takes a somewhat disciplinary tone to Riss for being out of line.

17,431 Part of it, the Assistant General Manager writes to Mr. Rhodebeck and says:

"It has come to our attention that your company has submitted" --

"Your company participates in our Government Rate Sheet No. 107, * * * However, Government Rate Sheet No. 107 names no 20,000 pound rating and in this respect this quotation gives your company an advantage over competitors.

"I think this is something which should be brought up for discussion before the General Rate Committee but before doing so I am wondering if you will let me have some information as to the basis and reason for the enlargement of the list and the reduced rating on the low minimum, or if you do not have this information available yourself, have your home office supply it to us."

Document 22, Stone on behalf of Riss, agrees to go along and get back in line.

The last sentence of the second paragraph says:

"If there is any objection on your part to the Column 75, minimum 20,000 pounds, I don't believe it would create any disturbance whatever if we restricted it not to apply in M. A. S. territory."

THE COURT: Mr. Holt, let me interrupt you just a second.

17,432 I will have to look through these myself and I will try to do it tomorrow, read most of them if not all of them, and I have a general idea of the type of evidence you expect to offer.

Now, I suppose you expect to offer this evidence in support of your counter claims and offer these letters and read them or the substance of them to the jury. Correct?

MR. HOLT: The precise mechanics has not been settled on, Your Honor.

THE COURT: I understand, but I mean if it is important and if it is admissible, the jury will have to hear it.

You have 149 in this booklet.

MR. HOLT: Yes, sir, but as I pointed out, it is only the first 82 as are numbered in this booklet that contain the basic narrative history of the conspiracy.

The remainder are the working documents, that is, illustrative documents.

THE COURT: And besides that you have a lot of information contained in the exhibit just filed by Mr. Ball, as the joint revised memorandum of the counter claim, with respect to Count 2 of the counter claim.

17,433 Don't you believe honestly if all this evidence were gone into before this jury, it would not only necessarily prolong this trial for two or three or four more months instead of just a few weeks, and that it would prejudice the rights of other defendants in this case that haven't got counter claims?

Don't you think their rights have to be considered besides yours?

MR. HOLT: I haven't consulted with the others --

THE COURT: Don't you believe this is the most complex and complicated case that you ever read about or heard about in your life that has been presented to a jury? And do you think that by burdening the jury with all this evidence on top of what they have heard, isn't going to result in not only inconvenience to the Court, the jury, and the lawyers, but counsel, and prejudice probably at least to the defendants who haven't seen fit to file counter claims?

I would like to get your version on it.

How are they going to possibly keep in mind what they have to keep in mind? I will hear you later on that point, Mr. McGlothlin.

MR. McGLOTHLIN: Well, if you want the answer for Pennsylvania Railroad as to whether it ought to be severed, which is what you are now asking, I am prepared to speak to that, Your Honor.

17,434 THE COURT: Well, I will hear you later on that.

MR. HOLT: Yes, sir.

THE COURT: The plaintiff came in here and represented and told the Court, "We expect to put this case in in two weeks, and we were several months getting the plaintiff's case in here -- cross examination, documents, charts, galore.

Now, do you think I am going to keep this jury another two or three or four months to try another case that ought to be tried separately?

I will hear counsel on that, and when I say two weeks, if I do let it go to trial, I mean two weeks.

And that is going to include everything, going to include the plaintiff's case, and I want to hear what evidence they have got. They have a right to come in here and bring in witnesses to explain these letters.

I don't think it's possible -- I never heard of any statement like that in the face of this evidence.

It gets me, frankly, quite angry to think about it.

MR. HOLT: I can speak only, Your Honor, as to the evidence that is before you, and as to that I can only say that the comparative physical bulk is not necessarily correlated to the complexity of issues. This is a rather
17,435 straightforward story.

THE COURT: Well, that is what you say, that it is a straightforward story, but on cross examination it might develop it is not. I don't know what the cross examination will develop in this case.

Anyway, you have got your side.

I am interested in two things:

What is the evidence in the case which you are attempting to outline? -- and I expect to read more of this, I hope over the week-end;

No. 2, should I separate these issues.

Those are the two things I am interested in.

All right.

MR. HOLT: I am not prepared to speak to the second, Your Honor.

Do I understand from the first that Your Honor would prefer simply to read these documents yourself, rather than go through them today?

THE COURT: I don't think it's necessary to go through them one at a time.

MR. HOLT: May I indicate to Your Honor what groups of numbered documents are relative to what particular matters? It should not take more than five or ten minutes.

THE COURT: All right.

17,436 MR. HOLT: The matter on which we were just engaged concludes with Item 24:

Item 25 brings in another rate bureau.

Beginning with Item 26 and Item 27, we introduce the other and most important bureau to Riss, the Rocky Mountain Motor Freight Bureau, and I would invite Your Honor's attention to the first page of Item 26, because I think

it is an item of considerable importance, a letter from Stone to Power of the Rocky Mountain Bureau.

The second paragraph:

"I thought it was understood by all concerned that all such quotations would be made through your bureau as specifically requested by the Chief of Transportation's office."

"There appears to be one or two things we can do, namely withdraw entirely from the bureau quotations and publish our own with the concurrence of connecting carriers or cooperate with all carriers concerned to the end that the quotations may be on the proper basis and that the rates may be uniform via all competing lines."

Item 28 shows individual carrier operations.

The next few documents I think are self-explanatory. I would invite Your Honor's attention to Document 32, where Mr. Hester points out that the request for this information, to attempt to make uniform rates, should be kept

17,437 confidential.

And Item 34 shows an interesting interpretation put on the word "meeting."

Items 38 and 39 show the continuing policy of publishing through bureaus as much as possible.

Items 40 through 43 are extremely interesting. It shows the authority exercised of the Southwestern Motor Freight Bureau to make rates without prior permission, and shows that they elected to do so in the face of the warning it might conflict with the anti-trust laws.

Item 46 shows considerable interest on the part of the Munitions Carriers Conference in the rates, although they purport to be a non-rate organization and so far as I know never applied for Section 5 (a) approval.

Item 50 is interesting. It is another of Mr. Tait's notes.

The last two lines show in a nutshell the real value of the rate-fixing arrangement to the motor carriers.

"Call E. E. S. - go below rail -- because of getting together."

Items 53 and 54 are instructive as to Riss and another major explosives carrier, Watson Bros. Watson Bros. sends Riss some of its quotations before -- or Riss sends Watson some of its quotations before it files them.

17,438 In Item 54 Watson replies, pointing out it may be interested in some, would not be interested in others, but if and when we do file, our rates will be competitive with the rates that you are establishing here.

The next two show some more correspondence between Riss and Watson, checking each other's rates.

Item 57, another carrier checking a Riss tender which is being circulated in advance, which uses the interesting phrase:

"Since we do not wish to cut a rate, we call this to your attention with the thought that you would want to revise the Riss tender."

Item 58, Hayes wants to exchange information.

In 59 through 62 they deal with a general increase in 1956, and the next few items show the continuation of practices of this sort into 1957.

In Item 67 you will notice the care with which rate adjustments are planned to be made on the same day even though they are not made through a joint agent.

There is an interesting comment in Item No. 70.

As late as July of 1957 Mr. Newbold of Riss writes to Roadway Express containing the sentence in the third paragraph:

"Walt, this is not written in any spirit of criticism, as I am certain that neither one of us would have intentionally filed something lower

17,439 than the other."

The last group of documents in this first group, that is, documents through 82, show how reliable Riss' quotations are in violating the anti-trust laws.

Document 71 is written on advice of counsel not to participate in Munitions Carriers Conference rate operating.

Docket 74, suddenly Riss decides he doesn't want to get into the sort of conference that the rest of the evidence shows has been going on for ten years, 'because it would be in direct violation of the anti-trust laws, and would subject us to prosecution and substantial fines,' although in the next paragraph Mr. Newbold suggests that 'we discuss this matter informally."

And the last group of documents in that category shows the similar.

Item 81, Mr. Hester back in 1951 apparently was advised not to take part in such a discussion and writes a self-serving note, so it was described.

Up above is a note apparently from the secretary, apparently in a woman's handwriting, reminding Mr. Hester to make a long distance call. This is about the 20th of June.

Item 82 was dictated the 20th of June:

17,440 "Discussed this matter with party on long distance 'phone. The subject will be before interested carriers at Hershey, Pennsylvania. I agreed to go along with whatever level of rates suggested by conference."

The remaining documents in Your Honor's book are simply illustrations of the major particular types of function carried on by the rate bureaus, and I will simply describe them in one brief sentence and tell Your Honor which pages apply to which type of activity:

Documents 83 to 87 have some examples of the adherance by carriers to published rates already presented and circulated in tenders of the tariff type, such as the 43 series from Rocky Mountain and the 303 series from the Middlewest.

A sample of it is contained in Document 84 which shows the structure of such quotations.

Page 2 shows the 19 revised pages, and page 3 shows the 20th revised page.

Your Honorwill see how simple it is to slip another competitive route in, thus joining another competitor, and adhering to existing price without any

effort to compete with the others.

Document 88 is a sample of a slightly different type, a so-called rate sheet, which seems to be what the Central States Motor Freight Bureau used.

17,441 Open routing and alphabetical list of carriers that participate is shown.

Another type of activity was the keeping of members of the rate bureaus posted on what rates were going to be filed by carriers so that anybody interested could get in on them; so that nobody could get in ahead of anybody else.

Document 95 is a sample of the Rocky Mountain Bulletin series. These were sent out apparently once a week, throughout the period 1954-57, so far as we have copies of, and for all I know were after that time, as well.

It announces to the members what new rates it has published and also on the second page what new rates are going to be published, and as the next document shows this information was acted upon by carriers to get in on new business at an equal rate.

A similar publication of the Middle Atlantic Conference is shown in Document 97.

Documents 98 through 101 show publications of the Southwestern Bureau. Some of those are strictly out of place because they deal with individually filed quotations.

103 and the following show the Middlewest's functioning in this regard.

17,442 107 and 108 show samples of another Bureau's form which was to act between the military services and the carriers passing on a suggested new rate.

The next large block of documents deals with across-the-board percentage increases by which the machinery was easily set up through the Rate Bureaus and would probably be difficult to do without them. That way every carrier could increase its rates simultaneously if they decided a rate increase was desirable, and not run the risk of having any competitor take the business away from him.

From 109 through 114 they are in slightly garbled order. It deals with 56 per cent increase in 1952 in the Rocky Mountain Territory.

118 deals with a blanket increase in the same territory in 1953.

119 and 120 through 121 deal with joint increases on specific items or groups of items.

122 and 123 show the Southern Motor Carriers Freight Conference engaged in the same sort of activity.

Riss was not strictly the member of the Southern Motor Carriers Rate Conference, Your Honor, so far as the records of the Commission disclose. They participated in a party in the application for its final approval, but only as a participant in interterritorial rates, not as a full-fledged member covered, because the company doesn't operate in that territory directly.

17,443 And the next few documents deal with a similar sort of procedure in the Southwest.

127 through 137 deal with a rate raise in the Middlewest Territory in April, 1952, or in 1952.

138 shows the Middlewest still at it in 1956.

And the last group of documents, the last pair of documents show an illustration of an interrelationship between bureau work and individual work.

The carrier, of course, didn't need to post a tender through the Bureau, although some of the evidence seems to show there was a considerable pressure from the competitors to do so, so as one letter says, "We can all lay our cards on the table."

The pool of information that the Bureau of Information has made available and made it possible to act in a parallel fashion through individual tender.

Document 139 is to serve a double purpose:

First, as a sample of the Middlewest bulletins which came out weekly throughout the period we are discussing, comparable to the Rocky Mountain bulletin we had an example of earlier, and also a specific example of what I have just mentioned.

If Your Honor will look at the third page of 139 you will see that notice was sent to the membership that the publication of Watson's Invitation
17,444 No. 1,000 was imminent, and in the body of it it quotes the rate of "155" on ammunition and explosives from Terre Haute or between Terre Haute and Lake City, Missouri. That is dated November 11, 1953.

Document 140 is a Riss quotation for exactly the same rate for exactly the same movement, dated November 23, 1953.

We have, except for those few notes of Mr. Tait's, I have included here no documents on the Munitions Carriers Conference. There is considerable evidence which will show that it exercised more authority over rates than it should have.

THE COURT: Now, let me ask you about "considerable evidence."

Is that evidence to be produced yet that is not a matter of record, or is all the evidence that you are going to introduce a matter of record, including this document or black book you have handed to me, which you have been reading from?

MR. HOLT: It is not now a matter of record since it has not been introduced in the main case.

THE COURT: I mean, do you have to still bring in other evidence that the Court doesn't know anything about?

MR. HOLT: I cannot say at this time that every document we intend
17,445 to introduce is here. I can on the other hand say, and I am quite sure, that every document that is here will not be introduced, unless we run into something that really surprises us, there will be nothing substantially different from the tenor which Your Honor has seen this morning.

* * *

17,473 BY MR. WRIGHT

* * *

MR. WRIGHT: For the argument -- I appreciate that, Your Honor.

For the purpose of the argument I am making here and now you may assume that there is evidence there which would tend to establish an illegal conspiracy to fix prices. You may also -- there is, of course, no difference between us upon the fact that price-fixing, whether engaged in for the purpose of lifting prices, lowering them, keeping them at the same level, is illegal per se.

That, of course, however, does not mean that such price-fixing is actionable by a competitor.

No suit is given to anybody under the anti-trust laws -- no private action for damages is given unless you can show not only that the defendants violated the law, and this is true whether you prove a per se violation or any
17,474 other kind of a violation. But there was at least the purpose or effect to injure you. You were somehow a target of the illegal activity that you are complaining about.

Now, I want to get back to this price-fixing in "C." Now, that isn't all they said with reference to "C."

You will notice that the counter claims go on and undertake to describe the purpose of the price-fixing.

The purpose of the price-fixing as alleged in the counter claims is "to divert to themselves" -- that is, the truckers -- "all of such transportation and forcing the counter claimant and other rail carriers to withdraw from such transportation."

That is this. It is not just mere price-fixing that is alleged, plus a diversion of some business as a result of the price-fixing from the railroads to the truckers, but price-fixing for the purpose of getting all of the business.

In other words, price-fixing with a monopolistic purpose.

This is stated in the Pennsylvania counter claim somewhat differently but you come out the same way, when they say "Riss participated in such joint action for the establishment of uniform rates. This is the price-fixing, for the
17,475 purpose of diverting to itself and other motor carriers all such transportation for the United States.

So that, again, as pleaded here, you have here not just price-fixing that is relied upon. What is relied upon in the pleadings is price-fixing for a monopolistic purpose, price-fixing in order to get a monopoly for the price-fixers and drive the counter-claimants out of business.

Now, there isn't anything in any of that evidence which Mr. Holt read to you from which anybody could infer such a purpose.

He started out there reading some letters about the transportation of post cards for the Government. I don't know whether the railroads ever have occasion to ship post cards for the Government. I would assume so, but that's just an extreme example. I mean, occasions where explosives rates were mentioned, there is nothing in any of this data which in any way suggests that the purpose of what was being done was to monopolize any one of these particular kinds of traffic -- postcards, explosives, or any other commodity.

The most that you could spell out in terms of purpose on any of it is a purpose to get business.

I think you can assume that no motor carrier or rail carrier wants to carry a pound of freight for any price lower than what he can charge and still
17,476 move the traffic.

That's the objective of everyone who is in business, and when you are in a competing business, whatever you do, certainly in quoting prices, you quote a price that you think will be the one that will get you the business that you need to get.

Now, nobody so far as I know up to the time that has been suggested in this case, has ever said in any argument I know anything about, that efforts to compete to get business in themselves, that is, that Riss & Company by trying to get business from the railroads, or that the railroads by trying to get business that Riss & Company had, that that kind of effort or intent or purpose is an intent or purpose that is in any way prohibited or condemned by the anti-trust laws.

That is normal, routine, competitive conduct.

You do not have a case of injury under the anti-trust laws; you do not have a situation that the section of the anti-trust laws giving the private litigants a cause of action -- that that section was intended to protect -- until you have some kind of purpose to injure the plaintiff's ability to compete, to eliminate his competition, restrict it, prevent him from engaging in competition.

Now, taking business by quoting lower prices is obviously not a means, or it is a perfectly normal method of competing and not something which is
17,477 calculated to prevent the other competitor from competing. It is part of the process of competition itself and you don't get anything that rises to the level of the necessary intent to injure unless there is some aspect of the competition which suggests that the purpose is not just to take business in the course of quoting lower prices, but that the purpose is to so adjust the price level or take any other form of actionwhich will result in the elimination of the competitor as a competitor for that kind of business in the future.

Now, that essential part of the cause of action here, while it was very plainly pleaded, it will never and can never be proven on the basis of the admissions and the statements that you now have in the record, and on the basis of what they say they are going to offer in evidence.

And under those circumstances, if Your Honor decides to sever -- as I say, as far as we are concerned it is extremely important in any severance that we, as well as the defendants, have the benefit of whatever evidence has now gone into this case.

THE COURT: Well, I will assure you that will be done if I do that.

MR. WRIGHT: And if Your Honor decides to sever, it ought to also be perfectly clear in the severance order what we are severing, because we should
17,478 not let this ambiguous situation that has existed up to today continue.

Here we were in a situation where long after these counter claims are filed, we have a pleading here which says, 'We are going to show one thing,' and then just on the evidence of the time when it is necessary to prove it, they say, 'No, no, we didn't meanwe were going to prove that at all; that is all

surplusage; this is what we are really going to prove,' and it's something quite different.

Now, I assume, Your Honor, that if you permit the amendment of the counter claim along the lines they are now advocating, you would do that in your discretion as something akin to an amendment to conform to the evidence.

But this should not have to be spelled out by some other Judge from argument and looking at a dozen different papers as you have to do now, to know what their claims, contentions and evidence really are.

If there is to be a severance of this claim as stated here, it should be accompanied by a precise statement of what the claim is that is being severed for trial.

THE COURT: Let me ask Mr. McGlothlin on that point:

Don't you think it would be advisable to prepare the precise statement
17,479 and the precise issue that you think is involved so that the Court would have the benefit of that, and submit it to me within a few days?

MR. McGLOTHLIN: I would think, Your Honor, if we are going to sever the case, the time to deal with that issue is at pre-trial before the other Judge hears the case.

I see no point in imposing upon us at this time the need to divert ourselves from something Your Honor is going to sever, and work on that.

Now, if you are going to sever it, as far as I am concerned, you are going to sever it and we will forget about it. But if you are not going to sever it, then I am prepared to go forward.

THE COURT: All right, I just wanted to get your thought on it.

MR. BALL: I might say if you will notice in our memorandum, that while we state exactly what we said in our opening statement where plaintiff was fully advised that we were limiting it to the price-fixing --

THE COURT: You are limiting your cause of action to the price-fixing.

MR. BALL: Well, that's what we always stated, but we say in the footnote here that if the Court does not regard that as significant that we will then
17,480 go ahead and prove this intent.

THE COURT: Prove the what?

MR. BALL: That is stated in our memorandum filed.

THE COURT: Yes.

MR. WRIGHT: Now, that's the kind of weaseling that ought to be taken care of right at this point. The reason we could not move to dismiss on the basis of the opening statement is because they had been very careful in those opening statements not to disclaim that the price-fixing had any purpose to injure us or monopolize a particular purpose.

MR. McGLOTHLIN: Now, Your Honor, wait a minute. I can't stand here --

MR. WRIGHT: Let me finish my argument here.

THE COURT: I will give you a chance in a few minutes.

You can read what was said there. I will give you a chance.

Let him finish.

I know that remarks by counsel put counsel out sometimes and irritate them. I hear things that make me angry and a lot of times I stomach them and don't say anything about that, but I mean, that's neither here nor there.

17,481 I wish some of you were sitting up in my place sometimes.

MR. WRIGHT: Certainly the opening statements do not in terms repudiate the allegations made in the counter claims to the effect that this price-fixing activity had this illegal purpose which is stated here, to wit:

"(1) To eliminate the railroads from this particular business, to eliminate their competition."

Now, if their position is that they have a cause of action, without such an allegation, I assume they are in effect asking Your Honor at this time for leave to amend these counter claims accordingly.

If that is their position, they should be so amended.

Now, if their position is that they still think they can prove what they allege, that they don't want to amend, that ought to be clearly set out too, because in that case we have a different remedy than we have in the other case.

If they are still claiming these allegations and still want to get the benefit of them, then, of course, our remedy is a motion for summary judgment.

If they are amending, as I understood Mr. McGlothlin to say in his memorandum, that he is in substance amending -- he is not doing it formally but doing it informally -- those counter claims should be actually amended to
17,482 conform to what he now asserts is the basis of his cause of action.

THE COURT: Wait a minute, Mr. Wright. Let me interrupt you:

Now, Mr. McGlothlin, I might have a point here:

This says a "pre-trial conference," and I think we have a right to discuss the issues in the case.

I think that if you wish to either amend paragraph 4 or just rely on one particular cause of action, for instance, price-fixing, I think now is the time to do it. That is, I will give you time to do it.

You don't have to do it today -- by way of a pleading -- so that you will specifically set forth what you are trying to prove.

I think Mr. Wright has a point there. I think this ought to be done.

MR. McGLOTHLIN: May I speak to that, Your Honor?

THE COURT: Yes.

MR. McGLOTHLIN: The only trouble with it is it runs against the whole concept of pre-trial:

The concept of pre-trial is that your pleadings allege a cause of action, which Mr. Wright has conceded; that you then in pre-trial state what the issues are that you are going to raise, and if required, to state the evidence with which
17,483 you are going to support them.

Your Honor over the period of the past year has required us to do that and we have done that.

You now have before you the evidence we propose to offer on the issues which show an illegal conspiracy to fix prices.

THE COURT: Now, wait a minute. Your whole case is based on illegal price-fixing, isn't it?

Mr. McCLOTHLIN: Well, Your Honor, let me say it is not.

THE COURT: Well, what is it based on besides that?

MR. McGLOTHLIN: Well, the documents in front of you, if Your Honor please, show and list documents which show what we think is enough to go to the jury on an intent to get a monopoly.

Now, it does not mean to throw it out because we may not establish it.

If the plaintiff doesn't think that is good enough proof, let him come in with summary judgment; we will fight him.

* * *

17,485 MR. McGLOTHLIN: He says at this late date, or on the evidence of something.

I read from the record of January 14, 1960, at a side bar conference at the bench, where I stated:

"The complaint in this case" -- referring to my counter claim -- "specifically charges a violation of Section 1 which is restraint, and it specifically charges fixing prices. It is to my mind improper for him to say, 'You have got to prove monopoly because that is what he charges.'

He made that same argument nine months ago, and I then told him what we were doing.

* * *

* * *

17,503 Q. In your testimony last Thursday, Mr. Steinbrecher, you stated in ICC proceedings prior to MC 200 Sub 84 and the consolidated explosives cases, public relations people had been called upon for assistance.

In what type of cases had that been done prior to the explosives cases?

A. Well, where we thought that the case was of sufficient importance to command some public interest and some public attention, that was done.

Q. Now, why was that done, Mr. Steinbrecher:

A. Primarily for two reasons: One, to inform railroad officials and the railroad industry and railroad employes of what was being tried, or what was pending, or what the railroad industry had to contend with; and secondly, regarding the issues of the proceeding, where the issues were of sufficient magnitude or importance to affect the public interest, to advise the public.

Q. Now, in this particular case, the explosives cases, did you or did you not have in mind that publicity as to the pendency of these proceedings and as to the type of issues involved might bring about intervention by public

17,504 groups?

A. Oh, yes, yes.

* * *

17,505 CROSS EXAMINATION OF MR. FRANCIS STEINBRECHER

BY MR. WRIGHT:

Q. Mr. Steinbrecher, that chart that is in front of you there,

17,506 headed, "Baggett Transportation Authority Between Points Served By Riss," that was a chart you prepared; was it?

A. It was prepared under my supervision, at my direction.

Q. And that chart was supposed to show, was it, new Baggett competition?

A. Yes; it was not to show merely new Baggett competition, but it was to show the competitive effect of Baggett's operations in a territory and

in an area and between points that Riss had applied for and was vitally concerned in, in view of the subsisting temporary authority held by Riss.

Q. Now, the red lines there show authority as of what date?

A. The red lines show authority as of 1955.

Q. That was authority that Baggett acquired in 1955; is that right?

A. Yes, sir. However, there was some temporary authority over some of those routes dating back to 1951.

Q. Well now, let me see if I can find out from you what the red lines are supposed to show, in so far as the impact if any on competition between Baggett --

THE COURT: I suppose you would like to go down there and use the pointer.

17,507 MR. WRIGHT: --and Riss is concerned.

(Whereupon the witness left the stand and approached the chart.)

BY MR. WRIGHT:

Q. Those red lines, those are supposed to be routes which represented routes which resulted in some loss of traffic by Riss & Company; is that right?

A. Well, let's put it this way: The red lines show authority granted to Baggett that might have resulted in loss of traffic to Riss. I don't know. I am not saying that this did result in loss of traffic, because I don't know what the situation was exactly.

Q. You didn't take the trouble to look at Exhibits 37, A, B and C, which show exactly what traffic if any Riss & Company carried between these points to see what if any impact there actually was?

A. No. My purpose -- if that is in the record, then I am sure it can be argued adequately. My purpose was not to draw any conclusions with respect to the volume of traffic that Riss may have handled between those points.

Q. You didn't mean to suggest, when you had the chart prepared, that those new routes there shown by the red lines actually resulted in any taking of traffic from Riss & Company by Baggett; is that correct?

A. I might -- yes, that is correct, to this extent: My testimony
17,508 was not related to volume of traffic that Riss may have lost to Baggett as a result of this. My testimony was designed to show that Riss was subjected to additional competition by Baggett in this area between these important points, and during this period.

Q. Well, let's take a couple of those points. That Earle, New Jersey. You have a red line drawn there indicating this new Baggett competition which you say occurred in 1955.

A. Yes.

Q. And if it appears -- as it does appear from this exhibit I just referred to, 37-A, B, C and D, that there had been no movements by Riss & Company between those points since 1952, do you think that chart is misleading?

A. No. I don't think it is misleading, because this is designed to show all the authority granted in 1955 together with some additional temporary

authority that Baggett held over routes that Riss at one time held temporary authority over, and of which some of these routes Riss lost that temporary authority.

Q. Maybe I misunderstood you. I thought in your previous answer, you had said it wasn't intended to show or suggest there was an adverse impact on Riss & Company's business at the time those red line authorities were granted?

17,509 A. It was, sir. The map is supposed to show the result of the decision in 1955. Now, the result of the decision in 1955 included, as you pointed out, a route or a couple of routes that Riss was not particularly interested in. But this authority was substantially the authority that the Navy supported from Crane, Indiana east. The Navy supported two points west of Crane, namely, Hastings, Nebraska, and McAlester, Oklahoma, as I recall; but this is what the Navy supported east of Crane, or Crane and points east.

Q. I think that is all. Those are all the questions I have about that.

(Whereupon the witness resumed the stand.)

MR. BALL: If the Court please, we are going to offer the report of the Commission in the Baggett case. There are some questions in my own summary that apparently the court reporter got inaccurately that I will want to correct at the proper time.

BY MR. WRIGHT:

Q. It is a fact, isn't it, the extent of authority doesn't really give you any indication as to what moves at all at any time; does it?

A. Taken alone --

Q. You may have authority and it may result in no movements?

17,510 A. Taken alone, that is absolutely right.

Q. And I gather in this publicity you referred to where you suggested that the grant of all of these authorities that motor carriers were seeking was going to result in additional motor carrier movement just doesn't have any basis in fact; does it?

MR. BALL: Just a minute. Will you read the question?

THE COURT: Just a moment. Read the question, please.

(Whereupon the pending question was read by the reporter.)

THE WITNESS: I think, Mr. Wright, if you will read the transcript, I said that it certainly could have and undoubtedly would have, depending upon several things: First, whether or not the carrier applying was serious in applying for authority and intending to use it after he got it; and secondly, whether the support for it had any basis in fact. In other words, whether there was a movement.

Conceivably, if somebody comes in to support an application and has no traffic to move, the support for that might be good, but the traffic that moves over it would be non-existent, because of the failure of the supporting shipper or supporting shippers or the general public to use the authority.

17, 511 But there is an additional factor there. It is not only the supporting shippers who are limited to the use of the authority, but once the authority has been granted, everybody in the United States, the general public has that available to them for use.

BY MR. WRIGHT:

Q. Now, let me direct your attention to ammunition and explosives traffic for the Defense Department.

It is a fact, is it not, that how much of that moves and where it moves is entirely determined by the Defense Department?

A. I have no reason to believe otherwise. I believe that is correct, yes.

Q. And that traffic moves whether there are two or three carriers serving a particular point or whether there are twenty; is that correct?

A. Conceivably, the same volume of traffic moves, but not the same volume for each carrier if there are twenty carriers between points.

Q. I understand. It would make a difference as to the carriers who moved it, but as far as the volume of traffic is concerned, it doesn't make the slightest difference whether there is one, two, three, five or twenty

carriers authorized to serve the particular points?

A. I think that is a fair statement.

* * *

DIRECT EXAMINATION OF MR. ROBERT L. MOULTON

BY MR. WHEELER:

* * *

17, 566 Q. I believe you stated that a citation proceeding had been instituted against some trucking companies?

A. Yes, there had been a citation instituted against the Riss Trucking Company, which citation was heard in February of 1951.

* * *

17, 569 Q. What was the fact, Mr. Moulton?

A. Before I had come on the Commission, the Commission had taken action against 14 other trucking companies, issuing citations for them.

Since I went on the Commission we issued a number of citations against other trucking companies.

* * *

17, 590 Q. Mr. Moulton, I believe you stated previously that your enforcement of your safety rules was dependent primarily upon the arrests and the levying of fines by the highway patrol and by your inspectors.

Is there any indication in the citation proceeding, or was there any as to whether the levying of fines would achieve compliance by Riss?

A. Well, it is true that as of that time practically the only enforcement weapons the Commission had were the inspection force of the Commission itself. The arrests and fines that were made and paid and so forth.

As to the latter part of your question, would you please repeat that again?

Q. Who paid the fine? Was it the driver or the company that paid the fine, or Riss & Company?

A. It's my understanding that the reading of the transcript here of the first citation, that it was testified to there that the driver paid the fine.

Therefore, when the company was caught in a violation, the company itself was not penalized.

17,591 Q. Now, after you came to the Commission and found, as you have stated, that the state of enforcement of your safety regulations was not satisfactory, did you attempt to inaugurate any procedures to improve that situation?

A. Well, one thing we did was to gather together all of the information which the Commission had been receiving, that is, prior to this time we had been receiving, of course, from day to day, in the Commission, the reports of our own inspectors in the field, the cases in which they brought prosecutions, there were arrests and convictions, and there was a record of that sent in.

There was also a record sent in of inspections by our investigators in the field, of where there were no arrests made, and warnings given, and that sort of thing.

And then we were receiving also from the Ohio highway patrol the records of the arrests which they made of certificated carriers.

We thought that all of this information should be gathered together and organized so that the Commission might be able to assemble the records of the various companies, and that's what we did and we were looking at some time -- and it was some time before we were able to get that all instigated but we were looking for the time and the time did come when we had a complete

17,592 record of all the violations of all the trucking companies posted on a card.

Q. Posted on a card?

A. Yes, sir.

Q. So that you could by reference to that card immediately ascertain what the record of any given company was?

A. Yes, sir.

Q. Now, after this 1951 citation proceeding, did Riss violations of Ohio safety rules cease, or not?

A. They did not cease.

Q. What were the considerations which led the Public Utilities Commission of Ohio to file its complaint with the Interstate Commerce Commission?

A. Well, first of all, the record of the company had not improved since the citation hearing in February, 1951.

The Commission filed its complaint against Riss with the I. C. C. in July of 1952. So there had been a period of over a year since the hearing of the citation in which to assess the record of the company.

The record had not improved, violations were continuing, and that was one reason, of course.

Another reason was the fact that in the preceding citation hearing in
17, 593 February, 1951, the then Chairman of the Commission had indicated that if the Commission determined in that proceeding that they had no jurisdiction against Riss, that they would follow through and file a complaint with the Interstate Commerce Commission.

Another consideration was that in April of 1952 there were three violations of Riss trucks in Ohio, in Hamilton County, Ohio, near Cincinnati, within a 24-hour period, which aroused very deep anxiety and concern of the Commission:

The first violation was that of an explosives cargo which was stopped by one of our inspectors and found to have an empty fire extinguisher. The driver had no log book and there was no tax decal.

The second violation occurred the next morning when one of our inspectors found that another truck -- another Riss truck carrying explosives had no tax decal, and no log book.

But the thing that really brought us to our senses on this thing was that later in that same day a truck of Riss, loaded with explosives, was going through this town of Harrison, Ohio, and it was noticed by our inspector that there was something leaking under the truck, and the truck was stopped and it
17, 594 was found that it was the gasoline tank which was leaking.

The truck was within the municipal limits of this community.

On further examination it was found that the fire extinguisher was empty, that there were no electric lanterns and no log book.

So when word reached us of that we, of course, were deeply concerned, to say the least.

What happened was at that immediate point that our inspector, of course, got the man out of town just as quickly as he could.

The driver was taken into the local court there and was fined a thousand dollars, the maximum fine.

But I would say that with this, with the backgound of the other citation, with the fact that the violations were continuing, and then when this particular event or series of events happened, we as public officials felt a very definite responsibility.

Certainly, if the truck had blown up and blown that town up, we would have had to bear, and rightfully so, part of the responsibility.

Q. Prior to the time you --

In filing the complaint were you carrying out the instructions that Riss' attorney, Mr. George, had given the Public Utilities Commission of Ohio
17,595 during the course of the citation proceeding?

A. Well, I would say --

Of course, Mr. George had practically in effect stated that, "If you want to do anything about this, you will have to go to the Interstate Commerce Commission to do it."

We didn't do it because Mr. George said so, however.

Q. Mr. Moulton, were officials of Riss & Company notified with respect to these incidents and violations, the three violations to which you have just testified?

A. Yes, they were:

After the first violation our inspector called the Cincinnati terminal of Riss and advised them of this explosives truck that had been found there without any fire extinguisher -- or with the empty fire extinguisher.

And then on the second offense, that is, the second offense that occurred the next morning, where the man was stopped without a log book and with no tax decal, our inspector then thought that he should call the Kansas City office of Riss, which he did, and he talked with a man there by the name of Colonel Miller, and he was given a hard time, as our inspector reported back to us, by Colonel Miller.

17,596 MR. WRIGHT: He is now testifying to something that is obviously hearsay -- what happened in this conversation between this inspector and Colonel Miller -- unless he has got a written report or something of that in front of him.

I don't think he is competent to do this.

MR. BALL: He is reporting what came to him upon which he took official action, and the hearsay rule does not apply to that.

THE COURT: Is this what came to you?

THE WITNESS: This came to me, Your Honor, through our staff; I mean, the man that I am speaking of who relayed the information was one of our employees, an inspector in the field.

MR. WRIGHT: I would have a further objection, that even if the inspector were here himself, he would not be able to use such conclusory terms as "gave him a hard time."

What he would have to do, I suppose, would be to give the substance of the conversation.

This gentleman is a lawyer, and he knows that perfectly well.

THE COURT: As I understand, the purpose of this was to determine what was before the Commission upon which they acted.

17,597 MR. WHEELER: Exactly.

* * *

17,608 Q. Why did you file the complaint with the Commission, Mr. Moulton?

A. Well, I think I have previously answered that in part, at least.

We felt that with the record of the violations which the Company had

17,609 accumulated, with the fact that notwithstanding the original citation that was issued to them in February 1951, their record having not improved; that those facts, taken together, with the incidents which I related just before the recess, which happened down in the vicinity of Harrison, Ohio, involving these explosives trucks, in one case with the leaking gasoline tank, and no fire extinguisher, or empty fire extinguishers; all of those things together, plus the fact that in the previous citation my predecessor, Chairman Mason, had indicated that the Commission would follow through on this matter, if it found that it did not have jurisdiction.

All of those facts taken together, I would say, is what motivated us to file the complaint, and I know of no other reason.

Q. Mr. Moulton, do you know of any evidence to indicate that the Ohio Commission's decision to file a complaint was in any way influenced by any activity of any railroad or any person employed by or connected with a railroad?

A. I have no knowledge of any such whatsoever.

MR. WHEELER: Your Honor, I now want to read from the text of Mr. Richard Riss's testimony in this proceeding, at transcript 2616. I was cross examining Mr. Riss at the time, and my question was:

"You want the jury to believe that Ohio filed their complaint

17,610 against you on the basis that the fire extinguishers were only partially empty?

"A. I want the jury to believe that Ohio made many charges against us and no reason whatsoever."

Later, at page 2705 --

MR. WRIGHT: I think it should be pointed out that Mr. Wheeler moved to strike the answer, and the Court granted the motion, and the jury was instructed to disregard it.

THE COURT: Well, it is not in the case, is it, if I ruled that way, if I sustained the motion?

MR. WHEELER: That I read only as a predicate to this later

portion, which I am about to read.

THE COURT: Well, apparently, I told the jury to disregard it.

MR. WHEELER:

"By Mr. Wheeler:

"Q. Mr. Riss, how can you state something was shortly after July 1952 unless you know when it was done?

"A. Because, Mr. Wheeler, I just remember that far back and I remember when we got these complaints that we didn't think we deserved to have that we asked to have a check-up by the Interstate Commerce Commission so we could kill that sort of propaganda that was going around.

"Q. You considered the violations contained in the

17,611 complaint merely propaganda?

"A. I say they were fixed.

"Q. The Ohio Commission was fixed?

"A. Yes."

BY MR. WHEELER:

Q. Mr. Moulton, I want first to ask you whether or not the violations contained in the complaint were in your view merely propaganda?

A. The violations which we enumerated in our complaint consisted of 596 specific violations of law or of rules of the Commission.

In the cases of the arrests of the highway patrols, they were violations of Ohio state laws. In the case of the arrests by the Commission's own force, they were violations either of law or of the rules of the Commission.

These 596 violations which based this citation upon were all actual violations of either the law or the lawful rules of the Public Utilities Commission of Ohio.

For that reason, I say they were certainly not propaganda.

Q. Mr. Moulton, had Riss and Company received notice of each of these violations, either through its driver or by direct mail to the company at the time that the violation was committed?

A. Yes, they had received notice, either through their driver
17,612 or directly at the home office of each and every one of these violations. It was the practice of the Commission to send to the home office, after March 15, 1951, and that would embrace the larger part of the violations, to the home office, as well as to the driver, a copy of the violation, of the date, when it occurred, of the inspector or the arresting officer, and the information with respect to the charge.

So they did have notice, yes, of all the violations upon which we based our complaint.

Q. Mr. Moulton, the plaintiff has introduced in evidence here as Exhibit 21 a copy of the complaint that your Commission filed with the Interstate Commerce Commission on July 18, 1952.

I wonder if you would turn to that and tell me what information that complaint carried with respect to the violation.

In the first place, did it list the violations there, Mr. Moulton?

A. Yes, it listed the violations, such as speeding or reckless driving, or whatever it was; and then also listed the dates on which it occurred.

Q. Now, after you filed this complaint with the Interstate Commerce Commission, what happened, Mr. Moulton?

A. I believe the first thing that happened was that the respondent Riss asked for an extension of time within which to file their answer, or whatever pleading they were to file, and that there was an extension granted,
17,613 I believe.

MR. WHEELER: Your Honor, I have here what has previously been marked as Defendant C&O Exhibit No. 7 for identification. This is an index of the pleadings filed in Docket No. MC-C-1413, the complaint case that the Public Utilities Commission of Ohio filed against Riss with the Inter-State Commerce Commission.

This was prepared by plaintiff's counsel as an index to the file which was here during the course of their presentation.

I would like to now offer it in evidence.

* * *

THE COURT: It may be admitted.

(The document previously marked for identification as Defendant No. 15, C&O, Exhibit No. 7, was received in evidence, index of pleadings in Docket MC-C-1413, Public Utilities Commission of Ohio vs Riss & Company, Inc.)

BY MR. WHEELER:

Q. Mr. Moulton, referring to C&O Exhibit 7, I believe you previously pointed out after the complaint was filed, the defendant requested an extension. 17,614 Does that indicate that thereafter Riss & Company filed an answer to the Ohio complaint, or did Riss take some other action?

A. They filed an answer, but on the same day that they filed the answer, they filed a motion to make our complaint more definite and certain.

Q. Mr. Moulton, at page 2699 of the record, in response to a question which I asked Mr. Riss as follows:

"Wasn't that change in the complaint to which you referred done in response to your motion to make it more definite and certain?"

This was Mr. Riss's response:

"We kept after the Commission to get something done. In 1953 the Commission told Ohio to file their complaint or they were going to kick it out. Then in '54, they still hadn't done anything, and the Commission was about to kick their complaint out and Ohio took some action. Two years after they had filed originally."

Mr. Moulton, do you have a copy there of the Riss motion to make more definite and certain the Ohio Commission complaint?

A. I do.

Q. By reference to that would you indicate what kind of a burden the motion placed on the Public Utilities Commission of Ohio?

* * *

17,616 THE COURT: State the date.

THE WITNESS: This motion was filed on September 5, 1952, with the Interstate Commerce Commission. Perhaps if I would read Paragraph 2 of the motion it will be responsive to the question.

THE COURT: What is the title of the motion, sir?

THE WITNESS: Defendant's motion to make more definite and certain under Rule 36.

BY MR. WHEELER:

Q. Will you please do so, Mr. Moulton?

A. Paragraph 2 of the Defendant's motion reads as follows: In each instance of alleged violation of Ohio traffic laws and/or the rules and regulations of the Public Utilities Commission of Ohio, driver's name, date of inspection, and/or arrest, place of inspection and/or arrest, name and official capacity of the person who made the arrest; the specific provision of the law of Ohio or the rules and regulations of the Public Utilities Commission of Ohio allegedly violated; whether a hearing was held; name and official capacity of officer before whom hearing, if any, was held;

Whether the driver was represented by counsel; and/or whether the driver was deprived of his rights; whether Riss & Company, Inc. was notified prior to the hearing, if any; and whether Riss & Company Inc. was afforded an opportunity to be represented at the hearing, if any;

17,617 Nature of the plea, if any, entered by the driver -- that is, guilty, not guilty, or nolo contendere, and so forth;

The result of the hearing, if any; and whether and when Riss & Company, Inc. was notified of the alleged violation and the hearing, if any.

Now, that motion was directed to making or furnishing this information with respect to each of the 596 violations which we had enumerated in our original complaint.

The Interstate Commerce Commission sustained this motion in part and required us to get the larger part of this information requested with respect to each one of these 596 violations.

That threw a considerable burden upon our staff, and it took a great amount of time and work to gather all that information together.

This order directing Ohio to comply with the order to make definite and certain was issued on April 12, 1954, and on April 23, 1954, we filed our amended complaint in which we furnished all of the information which had been requested by the Interstate Commerce Commission.

Our staff was small, relatively so, and we have a lot of other things to do besides this, and it was just physically and humanly impossible for us to gather this information together any sooner. We got it together as soon as we could, and we filed on April 23, 1954 and complied completely with the order of the I. C. C.

17,618 Q. Mr. Moulton, I don't recall whether you previously testified that prior to the time of the filing of this motion to make more definite and certain, Riss and Company either directly or through its drivers had been notified of every violation committed by them on the highway?

A. That is correct. They had received notice, either through their drivers, or at the home office, of all of these violations, and we filed a memorandum opposing the defendant's motion to make definite and certain, and pointed out that fact in our memorandum.

And we further pointed out that in the previous citation hearing --

* * *

17,619 Q. Would you read the portions of the memorandum reply that the State of Ohio made to Riss's motion to make more definite and certain, Mr. Moulton?

A. Page 1 of the memorandum stated this:

17,620 "These details and particulars are matters of public record and documentation and, as alleged in said complaint, have been previously furnished to Defendant as follows:

"A. Paragraph III thereof shows that said notifications of 104 violations therein complained of were forwarded to said Defendant:

"B. Paragraph IV thereof shows that said correction forms and inspection reports of said 390 violations complained or were issued to said Defendant; and

"C. Paragraph V thereof shows that said correction forms and inspection reports of said 102 violations complained of were issued to said Defendant."

On page 3 of the memorandum, there was this quotation from a statement made by Mr. George at the hearing on February 28, 1951:

"Mr. GEORGE: Prior to going forward I would like to make the same statement of record that was made in the two previous cases in the last few days, and that is that the respondent objects to going forward with this proceeding in view of the fact that it is its contention that the Commission has no jurisdiction over its operation insofar as violations"--

Q. To what commission was he referring there?

17, 621 A. To the Public Utilities Commission of Ohio.

Q. Proceed.

A. "Over its operation insofar as violations of the safety requirements are concerned and that it is an interstate motor carrier operating under the jurisdiction of the Interstate Commerce Commission."

The statement from Chairman Mason:

"It is your contention, then, Mr. George, that in all matters excepting taxation the Interstate Commerce Commission has jurisdiction?

"Mr. GEORGE: Yes, sir.

"CHAIRMAN MASON: Then it is your feeling that these -- aside from these correction sheets pertaining to tax matters all correction sheets the Commission has should be turned over to the Interstate Commerce Commission for prosecution or to do whatever they want in the matter?

"MR. GEORGE: That is right. I think perhaps you are wasting the taxpayers' money in the state of Ohio when you are going out and doing the work for the Federal Government and perhaps --"

And the statement by Chairman Mason:

"I might say this; if it is the ultimate determination of this Commission that your position is correct, the Ohio Commission will follow through and see that these things are brought to the
17, 622 attention of the Interstate Commerce Commission, because these things surely must stop, these violations of safety and tax matters and situations over which we have no jurisdiction. But it just seems to me that the interstate operators must conform to some law."

Q. Mr. Moulton, I believe you previously testified that you filed an amended complaint which contained additional material as required by the order of the Interstate Commerce Commission?

A. Yes, sir, we did.

Q. By reference to C&O Exhibit 7, can you state what action Riss and Company took, after you filed your amended complaint, setting forth the detailed information requested by Riss?

A. Following the filing of our amended complaint, the defendant filed a petition to strike the amended complaint.

* * *

CROSS EXAMINATION OF MR. MOULTON BY MR. WRIGHT

17,712 MR. WRIGHT: Plaintiff's Exhibit 312, for identification, is a mimeographed copy of what purports to be an order entered at a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 21st day of May, A. D. 1938, in No. MC-C-14--

THE COURT: 1938, you say?

MR. WRIGHT: 1953. The 21st day of May, A. D. 1953, No. MC-C-1413, The Public Utilities Commission of Ohio v. Riss & Company, Inc.; and it is signed by the Commission, Division 5, George W. Laird, Acting Secretary.

(Whereupon mimeographed copy of Interstate Commerce Commission Order, dated May 21, 1953, signed by Division 5, George W. Laird, Acting Secretary, No. MC-C-1413, was marked Plaintiff's Exhibit No. 312, for identification.)

BY MR. WRIGHT:

Q. I will show you this Exhibit 312, for identification, Mr. Moulton, and ask you if you recognize that as a copy of the order you were talking about on your direct examination?

A. Well, this appears to be the order of the Interstate Commerce Commission entered May 21 of '53.

THE COURT: The question was, I think, was that the copy of the order that you were talking about on your direct examination.

17,713 THE WITNESS: That would --

THE COURT: I think that answers the question.

THE WITNESS: That would be the order I would be talking about.

THE COURT: Let's proceed.

BY MR. WRIGHT:

Q. Now, will you just read it, please?

MR. McGLOTHLIN: It is not in evidence, Your Honor, yet.

Mr. WRIGHT: I thought the Court just said he would receive it. I offer it.

THE COURT: It will be received.

(Whereupon Plaintiff's Exhibit No. 312 was received in evidence.)

MR. RHOADS: If Your Honor please, do I understand Plaintiff's Exhibit 312, which has been referred to by this witness is now being offered in evidence?

THE COURT: That is what he said.

MR. RHOADS: On behalf of the ERPC, I object to the bit of evidence as against ERPC, as we were not a party to those proceedings. It seems to me it has no relevancy, materiality or competency whatsoever against us.

MR. SHEA: My clients were not a party to that proceeding.

THE COURT: Objection will be noted.

* * *

DIRECT EXAMINATION OF DR. BEHLING BY MR. AILES

* * *

17,961 THE COURT: Let me say now, so that we all understand each other, and I am working on these instructions, trying to work on them from time to time. One of the big issues and one of the most important issues is going to be, first, before the entry of these defendants, two or more of the defendants, in these proceedings before the ICC, and we will take Sub 84 as an example.

Before they decided to go in and oppose the application of Riss for certain operating authority that a conspiracy or agreement or combination had been formed prior to that time with the purpose and intent in mind -- we are dealing with corporations but the law is the same -- that a conspiracy, agreement, or combination had been formed prior to that time. It wouldn't make any difference how long prior, but at least some time prior to that, and that the common purpose of common objective was, according to the plaintiff, that as part of this conspiracy they would oppose the application of

Riss before the ICC in Sub 84, let us say, having in mind the purpose of driving Riss out of the business of transporting ammunition and explosives, or to attempt to monopolicy the transportation of ammunition and explosives in interstate commerce.

That creates an issue. You have to decide from all the evidence
17,962 on both sides what was the intent or purpose of two or more of these defendants when they did these things.

* * *

18,004 Q. What is the relationship between this problem of artificial
18,005 advantages and your Sheet 16?

A. Sheet 16 is prepared to show -- and there will be back-up data for it, I may say -- it shows on the lefthand side, the tall bar, that of all the money the railroads take in -- their revenue dollars, as we say -- the railroads pay out 20-1/2 cents of that revenue dollar to provide their own right-of-way and to pay taxes on that right-of-way. General taxes, these are, which go for the support of the general functions of government, to help run the schools and the courts and the police departments, and the other state and municipal functions.

Q. These are wholly aside from any income taxes the railroads pay, or gross receipts taxes?

A. The only taxes reflected here are the property taxes the railroads pay on their what we call their right-of-way, their roadway. There are property taxes that they pay on their equipment, on their locomotives, on their buildings, on their freight cars, on their passenger cars. They are not in here.

Q. These are taxes comparable to what the home owner pays on his house? Is that right? A. Right.

Q. All right. Now what is the 5.1 cents column, "Trucks," what does that represent?

A. Now the trucks, of course, by way of explanation, we know
18,006 they do not provide their own right-of-way. They operate on a

public right-of-way. They are public highways. They do pay certain charges for the privilege of such operations, and we call them, in the parlance of the transportation trade, we call them "user charges." You could think of them as rentals for operating on the public highways.

Now when we account for them for the same year of 1957, when we total up all of the kinds of user charges which the trucks represented in this demonstration pay, they come to a little over five cents out of their revenue dollar; whereas, as I pointed out before, in the case of the railroads, it takes over 20 cents of their revenue dollar to provide their right-of-way and to pay taxes, general taxes, on them.

* * *

OUT OF THE PRESENCE OF JURY BY THE COURT:

* * *

18,177 The thing that this jury has got to arrive at, and I have said it so many times, and I will say it again, What was the purpose in doing these things? What was the purpose in hiring Byoir? What was the purpose in getting in these proceedings?

* * *

TO THE JURY BY THE COURT:

* * *

18,190 I think it has been conceded on both sides that there isn't anything unlawful in and of itself for railroads or motor carriers, as Mr. Ball has demonstrated so well, to intervene in hearings before the Interstate Commerce Commission, for many reasons.

You might go in and say, "This man that I oppose isn't a fit person to operate on these routes, he doesn't have the financial ability to do it, he has given bad service to the public, he has done this, he has done that, he has got a bad operating record. We oppose it because we don't think there is a need for further service."

Some of you are familiar, maybe, with the practice before the

18,191 Interstate Commerce Commission, where many people might go before the Federal Communications Commission and seek an application or a license, rather, to start a television station, or a radio station, to give you a simple example of another agency. Well, somebody on the air like N. B. C. in Washington may oppose that. They may say that "you will interfere with our signal. We will have interference if you grant that application," or "There isn't any need for further service in Washington; we have got four television stations."

All of those interventions by themselves are perfectly lawful.

The issue in this case to be determined at the proper time is going to be what was the intent and purpose of the intervention. ***

* * *

BY MR. BALL:

18,210 The first item I propose to read is 513-A:

"The proceedings before the Interstate Commerce Commission controlling the legal right and authority of Riss to engage in the transportation of property as a common carrier by motor vehicle as to which Riss complains of the defendants' intervention are limited to ICC Docket No. MC-200 Sub 60 TA, ICC Docket No. MC-200 Sub No. 84; I.C.C. Docket No. MCC-1413 and I.C.C. Docket MCC-1783."

THE COURT: Those are the four proceedings.

MR. BALL: Those are the four proceedings, and the complaint is limited to the intervention in those four?

THE COURT: Do you agree to that, Mr. Wright?

MR. WRIGHT: Yes. I think perhaps it would be clearer to the jury if he said the Sub 84 was the Explosives case and the Sub 60 TA was the limitation of the explosives authority and the other two cases were the Ohio complaint case and the Commissioners' investigation --

MR. BALL: Mr. Wright is correct.

* * *

18,213 MR. BALL (Reading):

"No defendant violated the anti-trust laws by participating in the proceedings ~~known~~ as ICC Docket MC-200-Sub 84.

THE COURT: Of course, the jury, I think, knows the Court well enough by this time to realize that when the Court makes a statement it is not done with the purpose in mind or intention of indicating one way or the other how I personally might feel about a matter, because that is important, as you are the fact-finders in this case.

The only reason I do it from time to time, like when Mr. Wright or Mr. Ball came across a sentence here, it relates to some of the important issues, and there are many important issues in this case.

As Mr. Ball has correctly stated, there is no contention that the intervention in and of itself before the Sub 84 hearing, we will say, was unlawful. It is conceded that it is a lawful thing to go into those hearings for many reasons.

18,214 But the issue to be decided in this case -- and I will try to put it as succinctly and simply as I can:

"Was there a pre-existing conspiracy" --

It doesn't make any difference how long it might have existed --

" -- for some (we will say) appreciable period of time?

The question will be for the jury to decide.

You may say there wasn't any conspiracy.

"Was there an existing combination, agreement or conspiracy prior to the entry into these various proceedings to either drive the competitor, Riss, or other truckers, out of business, or to attempt to monopolize the transportation of ammunition and explosives?"

You have to first prove a pre-existing conspiracy of which two or more persons or corporations or defendants were parties.

And then the participation in these hearings pursuant to that conspiracy.

MR. BALL: Yes; with the intent of carrying it out.

THE COURT: With the intent of carrying out the purpose, the intent with which they entered that hearing.

That is one of the big issues you are going to have to decide.

18,215 All right, Mr. Ball.

MR. BALL: 28-C.

"No defendant committed an unlawful act against Riss by introducing testimony or other evidence in any proceeding before the Interstate Commerce Commission."

28-E:

"The American Trucking Associations, Inc., intervened in all of the proceedings in the interest of the motor carrier industry generally and not in support of any particular motor carrier."

MR. WRIGHT: I think that refers to Sub 84, doesn't it?

MR. BALL: Yes. Actually I don't think it was intended to be limited.

MR. WRIGHT: I didn't understand that the ATA had intervened in any of the other cases.

MR. FLYNN: I think the plural reference was only to the other applications of the same type.

MR. BALL: Yes.

THE COURT: All right.

MR. BALL: What it is, the request would contain some that were not admitted and the sequence of reference is not always entirely clear.

18,216 I am happy to have that clarification.

Now I want to read paragraph E-5, 23-A.

Now, this is from an answer to the interrogatories of the AWR and the Western Railroads, which were served July 9th, 1958, on the plaintiff, and which the plaintiff later answered.

And, again, I take it that the Court -- I don't know whether it has been called upon before, but the answers to the interrogratories are accepted

in the same force as in this --

THE COURT: That's correct, the answers are accepted as evidence in this case, or admissions, rather.

MR. BALL: This interrogatory reads:

"Question: Does Riss contend that solicitation by the defendants of the participation of citizens' groups, automobile clubs, chambers of commerce, parent-teachers associations, or other miscellaneous organizations or persons, in the proceedings before the Interstate Commerce Commission, described in sub-paragraph (d) of paragraph 14 of the complaint, or listed in answer to (b), constituted in itself an abuse of the privilege of intervention and participation in such proceedings?"

The answer: "No.

Interrogatory F-4:

18,217 "Question: Does Riss claim that independent public organizations such as the Illinois Parent-Teachers Association, or the Congress of Parents and Teachers of Oklahoma, have no legitimate interest in the activities of Riss, of explosives truckers, and of long-distance truckers?"

"Answer: No."

Now I go back again to a series of admissions that were in the requests made on December 1st, 1959:

Again under heading "Roman Nume ral V," Admission 28-F:

"On October 26, 1951, the Attorney General of New Jersey and Walter T. Margetz, Treasurer of that State, announced the intervention of New Jersey to the opposition of intervention of the various motor carriers."

Again, Mr. Wright, these relate to the Sub 84 proceedings.

"Neither the Attorney General of New Jersey nor Walter T. Margetz, Treasurer of that State, was an agent of any defendant."

29:

"Some of the motor carrier applicants intervened in opposition

to each other, and others intervened in support of certain applications in whole or in part."

18,218 31.

"The Commonwealth of Massachusetts intervened in the Sub 84 and Consolidated Proceedings through its Attorney General who presented the position of that State with respect to the applications filed by Riss and the other motor carrier applicants for permanent authority to transport explosives by truck."

No. 33:

"The Attorney General of Massachusetts was not an agent of any defendant."

Paragraph 34:

"The State of Connecticut intervened in the Sub 84 and Consolidated Proceedings and presented the position of that State with respect to the applications of Riss and other motor carriers for permanent authorization to transport ammunition and explosives by truck."

36:

"Neither Commissioner Hill nor Attorney General Conway, nor Assistant Attorney General Weinstein of Connecticut was an agent of any defendant."

39:

"Mrs. Paul Clear of Fort Wayne, Indiana, who intervened in MC-200 Sub 84, on behalf of the Indiana Roadside Council and the City of Fort Wayne, Indiana, testified without counsel, for

18,219 Mrs. Clear was not presented as a witness by any defendant."

38.

"The Brotherhood of Railway Trainmen intervened in MC-200 Sub 84, and the Consolidated Cases, in opposition to the various motor carrier applications. It was represented in those proceedings by its employee, Martin H. Miller."

40-A:

"Martin H. Miller was not an agent of any defendant."

* * *

BY MR. BALL:

18,220 "It is hereby stipulated and agreed by and between counsel for the plaintiff and for the defendants that:

1. The persons hereinafter listed were all of the witnesses testifying in the proceedings known as MC-200-Sub 84, and the Consolidated Explosives Cases, with the exception of witnesses employed by one or more of the motor carrier applicants, witnesses employed by motor carrier protestants, witnesses presented by the American Trucking Associations, and witnesses representing the Department of Defense.

2. The following list of the remaining 111 witnesses, each of whom testified in opposition to motor carrier applications, accurately indicates the party presenting such witness and in the case of the 82 witnesses presented by the railroads accurately reflects where indicated the authority for the appearance of each such witness to the extent shown by the transcript of evidence in those proceedings.

"One witness was presented by the Council of State Governments; Theodore G. Driscoll, Assistant Director, Council of State Governments.

"Eight witnesses were presented by the American Automobile Association:

"Hal H. Hale, Executive Secretary, American Association of State

18,221 Highway Officials;

"Charles A. Shoeffel, Superintendent, New Jersey State Police -- who has been, I think, a witness here;

MR. McGLOTHLIN: His deposition was read.

MR. BALL: That's right, his deposition was read.

"George Mingle, Superintendent, Ohio State Highway Patrol;

"Russell E. Singer, Executive Vice President, American Automobile Association;

"Kermit B. Rykken, Traffic Engineer, American Automobile Association;

"Matthew Seilski, Director of Safety and Traffic, Engineering Department, Chicago Motor Club;

"A. L. Sargent, Executive Director, Illinois Municipal League;

"Melvin A. Cook, Professor, University of Utah."

He was the Doctor who appeared here -- Doctor Cook who appeared here.

"One witness was presented by the State of Connecticut:

"G. Albert Hill, State Highway Commissioner, Connecticut.

"One witness was presented by the State of Indiana:

"Norman F. Schafer, Director of Traffic, Indiana State Highway

18,222 Commission.

"Two witnesses were presented by the Port of New York Authority:

"Edward K. Laux, Traffic Manager, Port of New York Authority; the gentleman on the stand earlier today;

"Roy C. Peterson, Chief of the Office of Safety, Port of New York Authority.

"One witness was presented by the State of Rhode Island:

"John T. Sheehan, Superintendent, Rhode Island State Police.

"One witness was presented by the City of St. Louis, Missouri:

"Charles G. Gonter, Traffic Commissioner, St. Louis, Missouri.

"One witness was presented by the City of Cleveland, Ohio:

"Augustus Foley, Assistant Traffic Commissioner, Cleveland, Ohio.

"One witness was presented by the City of Pittsburgh, Pa:

"Charles S. Cunningham, Traffic Manager, Pittsburgh, Pa.

Two witnesses were presented by the Triborough Bridge and Tunnel Authority:

18,223 "Irwin C. Witt, Controller, Triborough Bridge and Tunnel Authority;

"James Bray, Superintendent of Operations, Triborough Bridge and Tunnel Authority.

"One witness was presented by the City of New York, N. Y.

"Robert N. Withers, Inspector of Blasting; Acting Supervising Inspector, New York, New York.

"One witness was presented by the City of Buffalo, New York:

"Henry W. Osborne, Traffic Engineer, Buffalo, New York."

That was the Mr. Osborne who Mr. McGlothlin presented.

"One witness was presented by the City of Peoria, Illinois:

"Edward W. Nash, Assistant Fire Chief, Peoria, Illinois.

"One witness was presented by the City of Fort Wayne, Indiana and Indiana Roadside Council:

"Mrs. Paul E. Clear, President, Allen County Branch, Indiana Roadside Council.

"One witness was presented by the National Sheriffs Association:

"Charles J. Hahn, Executive Secretary, National Sheriffs Associa-
18,224 tion.

"One witness was presented by the American Bridge, Tunnel and Turnpike Association:

"Charles McCamic, President, American Bridge, Tunnel and Turnpike Association.

"Two witnesses were presented by the Brotherhood of Locomotive Engineers:

"Guy L. Brown, First Assistant, Grand Chief Engineer, Brotherhood of Locomotive Engineers;

"Harold M. Beck, Sheriff, Kiowa County, Kansas.

"One witness was presented by the Brotherhood of Railroad Trainmen:

"Martin H. Miller, Director, Legislative Department, Brotherhood of Railroad Trainmen.

"One witness was presented by the Order of Railway Conductors:

"W. D. Johnson, Vice President, Order of Railway Conductors.

"82 witnesses were presented by the protestant railroads:

"Randolph Collier, State Senator, California;

"Chairman of the Highways Research Committee of the California Legislature.

"Appearance authorized by California Senate Interim Committee on Highways, Streets and Bridges.

18,225 "N. F. W. Bartling, Chairman, Subcommittee on Highways of Legislative Interim Committee of Wyoming.

"Appeared at request of Governor of Wyoming and as Chairman of Committee.

"H. D. Booth, Director of Traffic and Safety, Arkansas Highway Commission. Appeared at direction of Arkansas State Highway Commission, and on behalf of the Arkansas Safety Council.

"Charles P. Middleton, Captain, Louisiana State Police. Appeared at direction of Director of Department of Public Safety of Louisiana.

"George Prowse, County Judge, Nueces County, Texas; President of County Judges and Commissioners Association of Texas. Appeared to represent Association, which itself was a protestant in the proceeding.

"Colonel Elmer F. Munshower, Superintendent, Maryland State Police. Appeared at request of Governor of Maryland.

"William J. Miller, Traffic and Planning Engineer, Delaware State Highway Department. Appeared for State Highway Department, at the direction of the Chief Engineer.

"James R. Palmer, Director of Public Works, Rock Island, Illinois. Appeared at the direction of the Rock Island City Council.

18,226 "Lloyd Palmer, Manager, Oklahoma Safety Council. Appeared at the direction of the officers of the Council.

"C. A. Bentley, President, Oklahoma Municipal League. Appeared pursuant to a resolution of the Board of Directors of the Oklahoma Municipal League.

"Max L. Krueger, President, Laramie, Wyoming, Chamber of Commerce. Appeared pursuant to a resolution of the Board of Directors of the Oklahoma Municipal League.

Max L. Krueger, President, Laramie, Wyoming, Chamber of Commerce. Appeared pursuant to a resolution of the Chamber of Commerce.

"Sam T. Adams, Arizona Municipal League. Appeared as a representative of the Municipal League and as a Councilman for the City of Tucson, Arizona.

"Mrs. W. S. Jerkins, Oklahoma P. T. A. Appeared at the direction of the Executive Committee of the Oklahoma PTA.

"Mark Watrous, State Highway Engineer, Colorado.

"J. T. Reece, Transportation Director, State Department of Education, New Mexico.

"W. C. Price, Engineer of Safety and Traffic, Iowa State Highway Commission.

"Pearl W. McMurray, Commissioner of the Department of Public Safety of Iowa.

18,227 "S. T. Roebuck, Chairman, Mississippi State Highway Commission.

Roy C. Adams, Member, Mississippi State Highway Commission.

"C. H. Buckius, Assistant Chief Engineer, Pennsylvania Department of Highways.

Howard Bechtel, Sheriff, Perkins County, Nebraska; President, Nebraska Sheriffs and Peace Officers Association.

"J. C. Whinnery, Inspector of Police, Traffic Division, City of Omaha.

"Lorraine Stein, National Congress of Parents and Teachers.

"Lester E. Olson, Assistant Director of Traffic, Great Lakes Carbon Corporation.

"R. D. Waller, Traffic Manager, Farley-Loetscher Manufacturing Company.

"T. C. Burwell, Vice President and Member of Board of Directors, A. E. Staley Manufacturing Company.

"J. Earl Bryan, General Traffic Manager, Wisconsin Pulp and Paper Manufacturers Association; Member of Traffic Committee, American Paper and Pulp Association.

18,228 "John R. Staley, Vice President, Quaker Oats Company.

"Walter Scott, Executive Vice President, Kansas City, Missouri, Board of Trade.

"D. L. Hammer, Traffic Manager, Uhlman Elevator Company of Texas.

"Andrew L. Kreamelmeyer, General Traffic Manager, Eagle-Picher Company.

"G. H. Shafer, General Traffic Manager, Weyerhauser Interests.

"T. H. Atherton, Assistant to President, Monongahela & Ohio Coal Company.

"Robert L. James, Police Officer, Joliet, Illinois.

"Frank L. Reiser, Captain of Traffic, Police Force, St. Joseph, Missouri.

"Marvin G. McAllister, Formerly with Department of Public Safety, Illinois.

"John M. Holton, Jr., Attorney, State of Pennsylvania.

"Robert N. Wallace, Attorney for G. M. & O. R. R., Joliet, Illinois.

"E. M. Costello, Special Representative, Wabash Railroad.

"George C. Young, President of Scott Bros., Inc., and Merchants

18,229 Trucking Company, wholly-owned subsidiaries of Pennsylvania Railroad.

"Lloyd J. Kiernan, A. A. R.

"George A. Knapp, Civil Engineer, Texas Railroads.

"H. W. Von Willer, Erie Railroad Company.

Dr. J. H. Parmelee, Vice President, A. A. R.

"C. V. McShane, Rock Island Railroad.

"Kermit W. Oakes, Railway Special Agent."

The remaining of these are names of employees of the railroad who appeared in traffic and similar matters on that.

Do you want me to read them, Mr. Wright?

MR. WRIGHT: None of them, I think, are A. A. R. employees.

MR. BALL: Beg your pardon.

There is Arthur H. Gass, A. A. R.; C. V. Trossevin, A. A. R.

I think that's the only ones.

MR. WRIGHT: Otherwise, the others are not.

* * *

BY THE COURT

* * *

18,238 MR. BALL: If the Court please, before proceeding with a witness, there were two admissions not read that complete the story about the Sub 84 case that I would like to read, so that that is wrapped up.

THE COURT: That may be done.

MR. BALL: "40F. The American Trucking Association presented two witnesses on the question of safety of motor transportation of explosives and with Riss presented eight rebuttal witnesses.

* * *

DIRECT EXAMINATION OF MR. DANIEL P. LOOMIS

BY MR. BALL:

* * *

18,241 These are from the same group of admissions.

"II. 5 The Association of Western Railways (hereinafter called AWR) is an unincorporated association of railroads operating principally west of the Mississippi and in the states of

18,242 Wisconsin and Illinois.

* * *

18,249 Q. At various times in this case there has been mention of the Law Department and the Public Relations Department of the AWR.

Now those, I take it -- in the light of the admissions -- were not the only departments constituting the AWR?

A. No, they were not. There is the Labor Department, the Administrative and Accounting Department, and Western Weighing & Inspection Bureau, and, of course, the Executive Department.

Q. Turning now to the Law Department of the AWR, will you describe the function of this department, in amplification of the admissions that I have already read to the Jury?

18,250 A. The general functions of the Law Department were to represent the member line western railroads in proceedings before regulatory com-

missions, occasional appearances in state legislative hearings, sometimes in court cases.

Q. Now, in the year 1954 -- taking that as an example -- how many employes were on the pay roll of the Law Department of the Association of Western Railways?

A. Fifteen.

Q. Does that number, fifteen, refer only to lawyers, or does it include the entire clerical staff and other staff assistants?

A. It includes the entire staff, both clerical staff, assistant, and law.

Q. What were the total expenditures made in connection with the Law Department of AWR in the year 1954, if you have them?

A. $229,411.

Q. What is the fact as to whether that expenditure included the salaries and wages of the fifteen employes?

A. It did.

Q. Does it also include the traveling expenses incurred by the AWR Law Department?

A. It does.

18,251 Q. Does it also include the cost of telephones, postage, printing briefs, mimeographing, supplies, and other costs of the Law Department?

A. It does.

Q. Incidentally, where are the offices or where were the offices of the AWR located in the period you were associated with them?

A. In the Union Station Building in Chicago.

Q. Does this figure, then, of $229,000-odd include an allocation of rent paid in the Union Station Building?

A. My understanding is that it does.

Q. What is the fact as to whether or not the attorneys on the staff of the Law Department of the AWR handled proceedings before administrative agencies on behalf of member railroads?

A. The members of the Law Department do so.

Q. Were these appearances during the period of time we are speaking of limited to appearances before the Interstate Commerce Commission?

A. No. They appeared before state commissions, before the Civil Aeronautics Board, in one or two court cases; possibly other boards, but those are all that I recall.

Q. And in those court cases, they also were cases involving the interests of more than one member line?

A. Yes.

18,252 Q. And some cases where AWR itself, was a party to litigation?

A. Yes. One case involved the Western-Weighing & Inspection Bureau, and the question of whether its employes were subject to the hours provisions of the Fair Labor Standards Act.

Q. Who was in charge of the Law Department from '49 through '57?

A. Mr. Joseph H. Hays.

Q. To whom did he report?

A. To me.

Q. You were then his superior officer?

A. Yes, sir.

Q. What is the fact as to whether or not you directed Mr. Hays and his staff to appear and assist in the defense of this lawsuit, this one in this Cour

A. I did.

Q. On behalf not only of the Association but of the Defendants who wer members of the Association?

A. I did so direct Mr. Hays.

Q. Was there anything unusual in your doing so?

A. No.

Q. In this case, there has also been some reference to the Public Relations Department of the Association of Western Railways. Will you describe the functions of the Public Relations Department?

18,253 A. Well, the functions of the Public Relations Department, as the name implies, were to deal with the public in disseminating information with respect to the railroad industry and the western railroads in particular, to issue press releases on matters of interest to the public, to deal with inquiries from the public or from schools and colleges, deal with newspapers and magazines seeking information.

Q. Do you know how many employes the Public Relations Department of the AWR had in -- take the year 1954?

A. The Public Relations Department had nine employes in 1954.

Q. Again, this includes, I take it, all of the employes, including clerical and staff employes?

A. Yes, it does.

Q. What were the total expenditures of this Public Relations Department in the year 1954?

A. $139,847.

Q. Does this figure include salaries, wages, printing costs, rent, and all the other charges incurred by the activities of the Public Relations Department?

A. It does.

Q. Do the employes of the Public Relations Department limit themselves to any particular field of public relations in the railroad industry?

18,254 A. No.

Q. What are some of the subjects that give rise to the activities of the Public Relations Department?

A. The general activities of the railroads, new inventions in research, labor negotiations. I would say the gamut of railroad operations.

Q. Now, in connection with those activities, what is the fact as to whether or not the Public Relations Department prepares what might be called educational material?

A. Yes.

Q. About the facts.

A. Yes, it does.

Q. Does it have any particular form that it takes?

A. Well, the standard work -- it issues a so-called Book of Railroad Facts every year, containing statistics and information on railroad operation, railroad equipment, revenues, traffic, both of all of the railroads and of the western railroads.

Q. Now, what is the fact as to whether or not the Public Relations Department receives and answers inquiries for information concerning railroading from the general public, from school, from research students, and the like?

A. It does.

Q. Does any single one of these varied activities of the Public
18,255 Relations Department, to your knowledge, require the major amount of the time and attention of the Public Relations Department?

A. No.

Q. Now, who was in charge of the Public Relations Department in the years 1949 through '57?

A. Harold M. Simms.

Q. Now, like Mr. Hays, Mr. Simms also reported to you, did he not?

A. He did.

Q. And you were his superior officer?

A. That is correct.

Q. Mr. Loomis, there have been introduced into this case certain pieces of paper headed, "Reproductions Pro and Con."

I have in my hand Plaintiff's Exhibit 57. It is headed, "Reproductions Pro and Con," and this particular one has the caption, "Explosives" on it.

Are you familiar with this type of literature put out by the Public Relations Department of AWR?

A. Yes.

Q. Have you, at my request, asked to have made an analysis of the subjects or the various captions, like the word, "Explosives," of the

subjects covered by "Reproductions Pro and Con," for the years 1950 through 1953?

18, 256 A. I have.

Q. I hand you what the Clerk has marked AWR Exhibit 645, for identification, and ask you if that is this list of captions?

A. That is the list of captions.

Q. And by "Captions", you mean the captions such as appears on Plaintiff's Exhibit 57, where it says, "Explosives"?

A. Yes.

MR. BALL: I would now like to offer in evidence AWR Exhibit for identification 645, which is headed, "List of Captions Which Indicates the Subjects Upon Which Various Reproductions Pro and Con Were Issued During the Period 1950 through 1953."

* * *

THE COURT: No objection; it may be admitted.

(Whereupon Defendant No. 2 AWR Exhibit No. 645 was received in evidence.)

MR. BALL: I would like to read this list of captions to the Jury.

18, 257

18, 258 THE COURT: All right.

MR. BALL: This list of captions reads as follows:

"Labor and Strikes," "Excise Taxes", "Waterways", "Highway Transport", "Highway Transport Explosives", "Train Service", "Credit", "Seaway", "Cal-Sag", "Miscellaneous", "Gas Trucks", "Airline Subsidies", "Passenger Competition", "British Nationalization", "National Transportation Policy", "Motion Picture", "Rail Taxes, "Diesel v. Iron Horse", "Mail Pay", "Postal Rates", "Barges", "Airlines", "Operating Bill on Safety", "Sawyer Address on Private Enterprise", "Car Orders", "Abandonments", "Subsidies", "Stations", "Rails Pay Own Way", "Trucks Pay Own Way?", "Railroad Personals", "Freight Rates", "Passenger Fares and Revenues", "Radio on Trains", "Keeshin Sale", "Socialism", "Coal Supply" "Legislation State", "Legislation United States", "Legislation Local Ordinance", "Regulation",

"Diversion Rail to Truck", "ATA and State Truck Association ads (Anti-rail)", "Railroad Advertisements", "Safety (Rail)", "Accidents (Rail)" "Socialization", "Nationalization", "Reparations", "Freight Cars (Shortage)", "Bulwinkle Act", "Chicago Truck Terminal", "Public Relations (Railroad)", "Interstate Commerce Commission", "Georgia Case", "Air Mail", "In the Big Truckers Corner" (Pro-truck), "Pension (Railroad)", "Anti-Trust (Lincoln)" "Freight", "Grade Crossings", "Express", "Drought", "Toll Roads".

18,260 BY MR. BALL:

Q. Incidentally, what is "Cal-Sag," do you know?

A. It is the Calumet Sag., which is a channel, harbor a little bit east of Chicago.

Q. These captions would indicate subjects that at some time were receiving newspaper publicity?

A. That is correct.

Q. And about which there would be newspaper and other publicity that would be reproduced and circulated?

18,261 A. That is right.

Q. Mr. Loomis, did you ascertain the total number of sheets of "Reproductions Pro and Con", issued during the period 1950-1953?

A. There were 2,629 sheets.

Q. How many of these sheets dealt with explosives?

A. 133, or approximately five per cent.

Q. Now, what is the fact as to whether or not the Public Relations Department of AWR made it a practice from time to time to supply material for publications upon request?

A. It did.

Q. What is the fact as to whether or not the Public Relations Department also from time to time prepared material for publication on the initiative of the Department, itself?

A. It did.

Q. What type of publication was this information ordinarily prepared for, Mr. Loomis?

A. Oh, generally for employe magazines or possibly trade magazines, such as Rotary, or American Legion, magazines of that sort, or the railroads' own magazines for their employes.

Q. Now, Mr. Loomis, what is the fact as to whether or not the Public Relations Department of the AWR concerned itself primarily with matters of interest in the territory which was served by the members of the AWR?

18,262 A. It did.

Q. And in that connection, Mr. Loomis, did the Association of Western Railways ever employ the services of Carl Byoir & Associates for any purpose?

A. No.

Q. Did the AWR ever pay any money to Carl Byoir & Associates for any purpose?

A. It did not.

Q. Did you ever hear or learn that the services of Carl Byoir & Associates were being used by any railroad or railroad association in connection with the explosives cases before the Interstate Commerce Commission?

A. I did not.

Q. Did you at any time authorize or instruct any employe of the Association of Western Railways to cooperate with Carl Byoir & Associates in any project being carried on by that concern?

A. Only to this extent: I did instruct them that if they received inquiries for information from Carl Byoir, they should furnish it to them just as they furnished information to anyone that requested it.

Q. Anyone, any member of the general public?

A. Right.

Q. In fact, was this furnishing of information to Carl Byoir any
18,263 different from the answering of requests from other railroads which were normally answered by the Public Relations Department?

A. No, it was not.

Q. Or from the general public?

A. That is right.

Q. Did you ever discuss with any representative of the Eastern Railroad Presidents Conference a division of territory between Carl Byoir & Associates and the Public Relations Department of AWR?

A. No, sir.

Q. Did you ever instruct Mr. Simms, or any other member of the Public Relations Department, as to any division of responsibility between Carl Byoir & Associates and the Public Relations Department of AWR?

A. No, sir.

Q. Did you ever hear from any employe of the AWR or from any representative of any railroad or railroad association that a territorial division of responsibility had been made between Carl Byoir & Associates and the Public Relations Department of AWR?

A. No, sir, I did not.

Q. And did you ever authorize any such division of responsibility?

A. No.

18,264 Q. Now, during the period of 1949 through 1957, or at least as long as you were with the AWR, had AWR performed any function in connection with the determination of railroad rates?

A. No, sir, it did not.

Q. To your knowledge, was the AWR ever consulted concerning negotiations with the Department of Defense about any part of Government traffic or the rates to be charged the Government by the railroads?

A. No, sir.

Q. To your knowledge, was the AWR kept informed concerning any such negotiations?

A. No.

Q. Did you, as chairman of the Association of Western Railways, have any supervision or control of any kind whatsoever over the rate activities of the Western Traffic Association?

A. No, sir, I did not.

Q. Were you --

A. Neither did the AWR.

Q. What is that?

A. Neither did the AWR.

Q. You mean, as an organization, it had no control?

A. Right.

Q. Were you ever consulted, to your recollection, as to the activities of the Western Traffic Association by either Mr. Dana, Mr. Barron or Mr.
18,265 McGuire, the successive chairmen of that organization?

A. No, sir, I was not.

Q. Were you consulted by any representative or employe of the Western Traffic Association or by any member railroad concerning the rate reductions on ammunition and explosives put in effect on October 20, 1955 and March 1, 1956?

A. I was not.

Q. To the best of your recollection, Mr. Loomis, when were you first informed that these rate reductions had been made?

A. Oh, sometime after this suit had been brought and during discussions of my appearance.

Q. As a witness in this case?

A. Right.

Q. In other words, within the last several months or a year?

A. Yes.

* * *

18,271 MR. BALL: I am going to read this to refresh the Jury's recollection. This letter is Plaintiff's 41-D.

"Dear Bill:

"Referring to our previous correspondence with respect to the trucking of explosives:"

BY MR. BALL:

Q. By the way, Mr. Loomis, what does that reference to previous correspondence refer to?

A. I had sent Mr. Faricy a copy of my letter of August 24 to the Chief Executives, and also of Mr. Hays' memorandum, which went to the Chief Executives.

Q. And, incidentally, why did you send Mr. Faricy that information?

A. Well, it was the custom to keep him informed on matters of general interest among the Western railroads, regardless of whether or not the AAR had any jurisdiction. * * *

BY MR. WRIGHT:

18,301 Q. Will you just read the reference in Mr. Faricy's letter there to a procedure which would keep the traffic on the rails.

A. "Which will keep the traffic" - - no reference to explosives.

Q. I take it that refers to Government traffic.

A. Well certainly in filing Section 22 quotations we do our best to keep as much business as we could.

Q. Well he was talking about something more than just filing Section 22 quotations, wasn't he?

A. I can't read that into it, no.

Q. You didn't have to have a committee just to file Section 22 quotations, did you?

MR. BALL: Well I again object. Mr. Wright again misquotes the witness. It isn't a matter of getting the committee to file quotations. It is to work out a procedure for the continued filing. Mr. Wright knows these differenc

THE COURT: If the witness doesn't understand the question, he can say so.

18,302 BY MR. WRIGHT:

Q. Who are those people that are referred to as the members of the committee there? Do you know who Mr. Alderman was?

A. Yes, sir. Mr. Alderman was general counsel for the Southern Railway.

Q. And who were the other gentlemen there?

A. Mr. Dana was the chairman of the Western Traffic Association.

Q. That was the rate bureau for the Western Railroads? Right?

A. Yes, sir.

Q. All right. And who were the others?

A. Mr. Fitzpatrick was the chairman of the Traffic Executives Association, Eastern Railroads.

Q. Which was the rate bureau for the eastern railroads, was it not?

A. That is, I guess, a fair characterization.

Mr. Kerr was the chairman of the, I think it was called, Southeastern Freight Asociation -- the Southeastern Traffic Association.

Q. Whatever it was, it was the rate bureau for the southern-southeastern railroads, was it not?

A. Right.

* * *

Q. Did I also understand you to say, Mr. Loomis, that you were not aware of what Carl Byoir was doing in connection with the explosive cases?

A. That is correct.

Q. You didn't know that Carl Byoir had been retained by the Eastern Railroads Presidents Conference?

18,304 A. I knew he had been retained by the Eastern Railroads Presidents Conference.

Q. Well to do what?

A. To present a general proposition, whatever he was asked to do by them.

Q. Didn't you know, as a matter of fact, that Carl Byoir was or had been engaged in matters which were also the direct concern of the AWR as well as the ERPC?

MR. BALL: There is not a scrap of evidence, if the Court please. This is another one of these assumptions, and I object to it.

THE COURT: Do you have anything to support that assumption or question, Mr. Wright?

MR. WRIGHT: I think I can refresh the witness' recollection here. Let's find out first what he says.

THE WITNESS: May I have the question read?

THE COURT: Read the question, please.

THE REPORTER (reading):

"Question: Didn't you know, as a matter of fact, that Carl Byoir was or had been engaged in matters which were also the direct concern of the AWR as well as the ERPC?"

THE WITNESS: When you put that question "direct concern," my answer would be no.

18,305 BY MR. WRIGHT:

Q. Do you have any recollection of a film called "Highways and Byways"?

A. Yes.

MR. BALL: Now, if the Court please, the film "Highways and Byways" has not been mentioned in this case in any of the evidence in chief. There are a large number of stipulations about it. It had nothing to do with explosives whatsoever. This is an examination on a question, did he know they were in connection with the explosives case. I would insist on reading the admitted facts about this film, if it is going to be dragged into this case at this late date.

THE COURT: All right, let's proceed. Do you object to this?

MR. BALL: Well then I ask for the privilege of reading the admitted facts, so the jury understands the background.

THE COURT: As I understand the import of the question, it is whether or not Carl Byoir had ever done anything in connection with the AWR. Is that correct? -- or for the AWR?

MR. BALL: It started out with explosives matters.

THE COURT: All right. Let's proceed.

MR. WRIGHT: Will you read the last question, Mr. Reporter.

18,306 THE REPORTER (reading:)

"Question: Do you have a recollection of a film called 'Highways and Byways'?"

THE WITNESS: Yes.

BY MR. WRIGHT:

Q. That was a film put out by something called the Farm Roads Foundation, was it not?

MR. BALL: Now, Your Honor, there are admitted facts, if the Court please, about the Farm Roads. We get slurring reference to "something called that." I now ask that I have the privilege of reading to the jury the facts that have been admitted.

THE COURT: Well let us wait until he finishes his cross-examining.

MR. BALL: I think it permits a misleading cross-examination, to go into a subject that is not mentioned in the plaintiff's case, and which has not been mentioned in this examination, without the jury having the chance to hear the admitted facts.

THE COURT: I will give you a chance to show that, after he completes the cross-examination. Let us proceed.

MR. WRIGHT: Would you read the question, please, Mr. Reporter.

THE REPORTER (reading:)

"Question: That was a film put out by something called the Farm Roads

18,307 Foundation, was it not?"

THE WITNESS: It was a film put out by the Farm Roads Foundation.

BY MR. WRIGHT:

Q. And do you remember how much it cost?

A. To the best of my recollection, somewhere in the neighborhood of $125,000.

Q. And do you recall how that cost was divided?

A. It was divided -- well, I do not know what the film cost. The railroads can give you that.

MR. BALL: If the Court please, what does the cost of this film have to do with any subject covered on the direct examination?

THE COURT: I will ask Mr. Wright to tell me what he proposes to show by this.

MR. WRIGHT: In the course of our direct case we read into evidence -- and if Mr. Ball has forgotten, I will be glad to refresh his recollection by readin him again -- certain ERPC interrogatory answers which dealt with this particula film and its cost and how it was divided.

Now there is no secret about any of this data. These interrogatory answers were read in, and I will be happy to read them again. But I would like to continue the examination of the witness, if I may. I don't see that any of this is a valid gounds for --

18,308 THE COURT: Just a minute, please.

I am going to admonish counsel on both sides, if you have an objection to make, make your objection and the Court will rule on the objection. I don't want any interruptions. I want to permit counsel the right to cross-examine, Mr. Ball, like I gave you a lot of latitude, and every other lawyer. If you have an objection, I will rule on it. If you have any rebuttal, I will pass on that. If you want to state your objection, I will hear you.

MR. BALL: My objection is this is not proper cross-examination, but the interjection of a new issue.

THE COURT: I disagree with you and I will overrule your objection. Let us proceed.

MR. McGLOTHLIN: Your Honor, I thought Your Honor had asked Mr. Wright to state the purpose, and I didn't hear his response.

THE COURT: You didn't hear Mr. Wright's --

MR. McGLOTHLIN: I heard his reply to the effect that there was something in the direct case that bore on this matter; but not as to the purpose.

THE COURT: All right.

Do you wish to state it again, Mr. Wright?

MR. WRIGHT: I think the purpose will be apparent as we proceed.

THE COURT: Then let's proceed, gentlemen.

18,309 BY MR. WRIGHT:

Q. Now, Mr. Loomis, you do recall that film; and you recall, do you not, that the cost of that film was divided between the Eastern and the Southeastern and the Western railroads, do you not?

A. I do not recall whether the entire cost was divided. I do recall the contribution that was made.

Q. And that was a matter that was handled directly by you, was it not?

A. Yes, it was.

Q. The handling of those costs?

A. That is right.

Q. And you are aware of the fact of who prepared the script for that film?

A. I do not recall.

Q. Do you know what the subject-matter of the film was?

A. Yes. The subject-matter of the film was the improvement of the farm-to-market roads, spending more money on the country highways than in the building of the big, commercial highways.

Q. The thesis of the film was that you wanted to spend the money on the roads that were of direct benefit to the railroads, that served the railway freight stations; isn't that right?

18,310 A. No, not with that qualification.

The purpose of the film was to back the spending of more money on farm and country roads.

Q. I say, those farm and country roads you were talking about and you were advocating more money for were the roads which brought the produce to the railroad freight stations from the rural communities, were they not?

A. Not necessarily.

Q. You don't think the railroads as such had any special interest in those roads at all?

A. We have always been interested in farm-to-market roads.

Q. Well, I gather that was the purpose in putting up the $125,000 original cost, and then an additional sum to get the film distributed, wasn't it?

A. The purpose was, as stated, that we thought more money should be spent on the farm-to-market roads and not so much on the big commercial highways.

* * *

REDIRECT EXAMINATION OF MR. LOOMIS BY MR. WRIGHT

18,320 BY MR. BALL:

Q. Mr. Loomis, did you regard anything in the letter you received from Mr. Faricy, which has been introduced as Plaintiff's Exhibit 314, as confidential in any way?

A. No, sir, I did not.

The reason I happened to know about the substance of that was because shortly before then I had attended a meeting of the Western Traffic Association. They asked the presidents of the western roads to come in, to inform them of the status of these procedures for filing Section 22 quotations. It had nothing to do with any specific rates or the filing of any rates. It was a matter of procedure, a matter of whether there would be an appeal on the part of the Secretary of Defense. It had nothing to do with any specific rates.

* * *

OUT OF PRESENCE OF JURY

18,351 THE COURT: Then there are some general instructions or general law. As I understand the conspiracy law, and I have an instruction on it, and I think I read it to the jury two or three times.

Let us assume that there is in evidence, if there is any evidence, that four or five of them got together prior to the intervention proceedings, and after the intervention proceeding, during the intervention proceedings several more came in, knowing the purpose of the conspiracy.

Now, if those others that came into the alleged conspiracy, knowing its purpose and the intent as to what it was all about, and did any act in furtherance of it, or encouraged it or aided and abetted in it, then I think under the law they would be responsible for all the act committed by the other co-conspirators.

* * *

CERTAIN PLAINTIFF'S ADMISSIONS READ BY MR. BALL

18,354 No. 61: "On July 15, 1952, the Public Utilities Commission of Ohio filed a complaint against Riss in the ICC, seeking a revocation of Riss' authority to operate in interstate commerce through the State of Ohio. This action was unprecedented. This complaint was assigned Docket No. MC-C-1413 and was entitled Public Utilities Commission of Ohio versus Riss.

* * *

18,355 "68: The western railroads which intervened in PUCO v. Riss, MC-C-1413 filed a written petition setting forth the reasons for such intervention, andsuch intervention was permitted by the Interstate Commerce Commission.

* * *

CROSS EXAMINATION OF MR. WILLIAM T. FARICY

BY MR. WRIGHT:

* * *

18,564 Q. Mr. Faricy, I think you said that progress report about the transportation of explosives over the highways that was delivered at your October 30, 1953 Board meeting, according to the minutes there, was a progress report by General Murrow?

A. That's right.

Q. And what was his position at that time?

A. He was the Director of the Competitive Transportation Research Division.

Q. You had said something about him being in Korea?

A. That's right.

Q. That was before --

A. He was back by this time.

* * *

CERTAIN OF PLAINTIFF'S ADMISSIONS READ BY MR. BALL:

* * *

18,570 THE CLERK: Plaintiff's Exhibit No. 316 for identification.

(Thereupon letter, on stationery of President Johnston of Illinois Central, 10-1-51, with attached article "TNT on the Highways, was marked Plaintiff's Exhibit No. 316 for identification.)

THE COURT: Counsel wishes to see it, I suppose.

MR. McGLOTHLIN Sir?

THE COURT: I imagine counsel would like to read it.

MR. McGLOTHLIN: I would like to see it.

THE COURT: All right, I think counsel ought to look at it first.

(Document exhibited to counsel.)

MR. BALL: The defendant Illinois Central has no objection other than it doesn't prove anything.

The other defendants that I represent object on the ground that as far as they are concerned the letter is hearsay and not binding on them.

THE COURT: That's the reason we have the jury here, to determine whether it proves anything or not.

All right.

MR. BALL: Well, I meant irrelevant. Perhaps that's the lawyer's word for that.

18,571 MR. McGLOTHLIN: I assume we have the advantage of the hearsay objection.

THE COURT: It may be admitted.

(Thereupon, Plaintiff's Exhibit No. 316 for identification was received in evidence.)

* * *

OUT OF PRESENCE OF JURY

BY THE COURT:

* * *

18,586 Now, I have taken home, I think last week-end, and the week-end before last, and read this Coast Guard exhibit.

18,587 Mr. Ailes raised some question about it. It is already admitted in evidence. I don't know, No. 312, or whatever it is. That Coast Guard report about the Perth Amboy disaster, I don't see any harm in that. All it comes down to is that they don't know the cause of it. That is the conclusion. I can't see any harm in it.

MR. AILES: That is part of my point, the fact that it doesn't prove a thing, but secondly, that accident is one which everybody, but Mr. Wright, I believe, agrees occurred not in rail transportation.

It is unlike the Roseburg, Oregon, situation, which occurred while the explosives were still in the control --

THE COURT: Well, Mr. Ailes, I am going to admit it. You take your exception.

MR. AILES: Yes, sir.

(The document previously marked for identification as Plaintiff's Exhibit 306 was received in evidence, Coast Guard report, South Amboy explosion, dated June 30, 1950.)

MR. McGLOTHLIN: I would like to note an objection. I thought Your Honor had reserved ruling so we could all read it.

THE COURT: Well, I did, but I didn't want to waste too much time on it.

18,588 MR. McGLOTHLIN: Well, I object to it. It is complete hearsay.

THE COURT: Well, now, let us talk about the hearsay. There are a lot of things that are hearsay. I have allowed both sides to put in a lot of things probably that may not be -- that should not have been put in, but it is in the record, and I don't think it is substantial error to admit it.

MR. AILES: Well, I don't want to argue about what Your Honor has ruled on, but the point about the exhibit is that the Coast Guard is negligent.

You remember Dr. Cook's testimony about Texas City. In that disaster the question was whether the Coast Guard had properly done its job.

Here is a report that the Coast Guard prepared for the purpose of proving that it was -- that it didn't commit any violation of the regulations itself. So it seems to me that the exhibit, if it made any finding, that they would be --

THE COURT: Well, it seems to me it helps you just as much. I don't know how it helps the plaintiff, frankly.

MR. AILES: I don't either, except that I don't think that the South Amboy case ought to be in this one at all.

18,589 THE COURT: All right, well, it says on page 21, the opinion:

"Based exclusively on the evidence presented, after full and mature deliberation, and consideration of the many facts developed in the investigation of this case, the Board is of the following opinion:

"1. The actual cause of the explosion is unknown;

"2. The most probable cause of the explosion is accidental detonation of a case of anti-tank mines in a freight car, or while being transferred from a freight car into a lighter, or on one of the lighters, due to the cases being sensitive to shock by reason of," and etcetera.

Now, I don't see that it is too important.

MR. AILES: It is just usual for the man that offered it to be able to show that it is of some value in the case.

THE COURT: Well, it may throw some light on it. I don't know.

MR. SHEA: Could I say a word, Your Honor?

THE COURT: Yes.

MR. SHEA: I suspect, Your Honor, since Mr. Wright has made this statement, that this is an explosion which he will try to attribute to rail, an explosion on the rails, presumably. I can't see what other use he would
18,590 make of it. That there were a number killed, and therefore representations that there were some killed in a railroad accident is not true.

Now, in respect to that, everyone who has had to deal with it, every court has indicated that it is not to be classified as a railroad accident. The fact just don't show it.

Apparently he wants to rely on some ambiguity for the purpose, but not a single one of these defendants was represented at this hearing. There was no opportunity to be at the hearing by them, as far as I know, and certainly my clients were not.

THE COURT: Now, let me tell you, Mr. Shea, and I didn't mean to interrupt you. Let us take these few minutes and we will be able to discuss

these things.

I am so confident that this jury -- and I have watched this jury a lot, and I hope that they are not able to read my mind on a lot of things, but I try to size them up as I sit here, and you may wonder why I sit this way, because I have got a nice footstool here, but I can rest myself this way, and I can take a good look at this jury.

Let me tell you this one thing: There is one thing this jury knows in my opinion, as well as I know it, that they know that it is dangerous to transport explosives, I believe, by both means of transportation, truck and
18,591 railroad. And they know that that is going to be an important issue going to show the intent, why the railroads got into these hearings, whether or not they got in there for the purpose of protecting the railroads' rights and interests and the public interest. I don't believe that they are going to decide this case on whether or not they believe it is more dangerous to transport by truck or railroad. They are going to decide this case, I believe, on the real issues in here. They know enough to separate what is inflammatory and what is not inflammatory, and I have a lot of confidence in the jury. Both sides ought to be thankful that we have got, what I think is an extremely intelligent jury, and I think they have been educated to the issues in this case, and as I have said before, whatever verdict they bring in, as I told them in the box, that I think it would be an intelligent verdict.

I don't think you ought to get exercised or excited about a report like this. I don't think it is that important. I am going to let it in, anyway. This report is not going to decide this case.

To use an old expression: You can bet all the tea in China on that one.

* * *

18,592 MR. BALL: If the Court please, I want to read first two answers to the interrogatories that the Western Railroads served on the plaintiff in July 1958. The first is interrogatory E. II. 9. (a).

The interrogatory reads this way:

"Was any part of the damages claimed by Riss caused by revocation or cancellation of its interstate operating authority?

"Answer: No."

Then Interrogatory E. IV. 11 (a):

"Was any part of the damages claimed by Riss caused by the enforcement of statutes, ordinances, or regulations against Riss?

"Answer. No."

* * *

BY THE COURT

* * *

18,716 A man brought in here from out in the West -- I don't know what it cost you to bring him in here -- must have cost a lot of money, and he got disgruntled because -- I don't know -- he brought a truckload or carload of vegetables and lost $300.00.

Can you imagine a more ridiculous thing, to bring into a case of this magnitude, one disgruntled shipper like that, that lost about $300.00?

I would like to be arguing this case to the jury and talk about it. I would laugh you out of court on it.

MR. SHEA: Well --

THE COURT: I don't get a chance because I am not an advocate, but I have a right to comment on the type of evidence that has been offered in this case. The reason I admitted it is because it might have been remotely relevant to some of your issues, but if any counsel in this case thinks that this Court has been kidded into not knowing what the picture of this case is, just don't think that for another moment.

* * *

18,724 THE COURT: I have been in too many battles in the courtroom to take things personally, and all of you have done the most excellent job, I think, that has ever been done. I have never heard a better-prepared case in my life, and I have been in hundreds of cases, as you know.

I think Mr. Wright and Mr. Layne have been outstanding in the way

18,725 they have prepared this case.

Mr. McGlothlin, and Mr. Ball, everybody connected.

Col. Rhoads and Mr. Pierpoint.

I have never seen a case prepared like this, and I don't think we will ever have a case like this again, maybe, in the history of our courts, I don't think there has ever been one like that, and I can't find words adequate to praise the counsel on both sides for the job they have done for their clients, and I just hope that the clients appreciate what they have done -- the nights of sleep -- and I am not doing this to build anybody up, because they don't need it -- the sleepless nights they have gone through, the early hours they have gotten up in the morning --

* * *

BY MR. BALL:

18,731 This is Interrogatory D-(i):

"Does Riss contend that the joint conduct of activities by the defendants or any of them, in support of or in opposition to proposed ordinances or legislation, is evidence of an alleged conspiracy?

"Answer: No."

* * *

BY MR. BALL:

18,735 "VIII. 32.

"The ICC concluded in the Reparations Cases that the Section 22 rates charged by the railroads were not 'unjust or unreasonable."

18,736 "33.

"The ICC did not attempt to ascertain what minimum rates would have been just or reasonable, but confined itself to a finding that the Section 22 rates charged did not exceed the maximum rate which would be just and reasonable."

* * *

I am now going to read certain admissions or answers to interrogatories that relate to certain of the rate problems in this case:

"H- 1. of the interrogatories of the Western Railroads filed in July of 1948:

"Identify the alleged 'uniform, unpublished rate quotations' of which Riss complains.

"Answer: The uniform unpublished rate quotations of which Riss complains are the following:"

Then it lists TEA, and WTA, and SFA quotations, and certain amendments thereto which are limited --

18,737 In other words, I don't think I need burden the jury although I will have the reporter write these into the record.

THE COURT: That will be all right.

MR. BALL: But these are specifically the quotations that were made on October 22, 1955, March 1st, 1956, and April 1st, 1956.

I have to turn to Mr. Flynn for my exact verification on those dates, Your Honor.

But I would like to have the reporter write those in:

(The uniform unpublished rate quotations of which Riss complains are the following:)

(a) TEA-ER Section 22 Quotation No. A-1706-A-TEA-ER File 4170.

EC-WTA Section 22 Quotation No. 76-EC-WTA File 1010-78.

SFA Section 22 Quotation Advice No. A-1397-SFA File G. R. No. 728.

(b) SWFB Government Rate Quotation No. 1798-File: SWFB GRS 1438.

(c) Amendments Nos. 1 & 2 to:

SWFB Government Rate Quotation No. 1798-SWFB GRS 1438.

18,738 TEA-ER Section 22 Quotation No. A-1837-TEA-ER N3324-289.

IFA Section 22 Quotation No. 191 IFA IRC 1211-143.

WTLC Section 22 Quotation No. 1241-WTLC 369-8-1610

SFA Section 22 Quotation Advice No. 1504-SFA G. R. 1132.

(d) WTL Section 22 Quotation No. 1253 WTLC G-File

369-8-1610.

TEA-ER Section 22 Quotation No. A-1840-A-TEA-ER File No. 3324-289.

SFA Section 22 Advice No. A 1530 SFA File G. R. No. 728.

IFA Section 22 Quotation No. 1242 IFA File IRC-F-4211-143 ORMV-F-12-11-155.

* * *

18,739 VIII. 37 of Admissions:

"However, beginning at least as early as 1950, certain defendants, through their Section 5a organizations, began issuing Section 22 quotations on ammunitions and explosives at levels established to meet motor carrier competition."

That relates to those points to points.

* * *

18,743 I want to read Admission Roman numeral VI, paragraph 1:

"Riss does not know of any false statements actually published by any defendant concerning the character and conduct of officers of Riss."

2.

"The Executive Committee of the Governors' Conference held September 20 to October 3, 1951, issued a statement opposing grants of authority by the I. C. C. to motor carriers to transport explosives.

37.

"On August 20, 1952, press releases were issued by the States of Indiana, New Jersey, Massachusetts, Rhode Island, Pennsylvania, West Virginia and Connecticut, and by the City of Cleveland, Ohio, announcing their intervention in Sub 84 and Consolidated Proceedings.

38.

"The press releases were issued on the letterhead of the Chief Law Officers of those States and of the City of Cleveland,

Ohio. These releases were in fact approved and authorized
18,744 by such officials.

39.

"None of these officials was an agent of any of the defendants.

40.

"The press releases concerning exceptions filed by various State and city governments opposing the applicants in the Sub 84 and Consolidated Proceedings, issued on the letterheads of the Chief Law Officers of the States of Massachusetts, Connecticut, Rhode Island and Pennsylvania, and of the Cities of St. Louis, Pittsburgh, Cleveland and Peoria, and of the Port of New York and Triborough Bridge Authorities, were in fact approved and authorized by such officials."

* * *

18,821 Interrogatory D-14-F:

"Does Riss contend that the Association of American Railroads, the Association of Western Railroads, the Traffic Executive Association Eastern Railroads, and the Eastern Railroad Presidents Conference, or any of them, constitute an agreement, combination and conspiracy in restraint of trade?

"Answer: No."

D-14-G:

"Does Riss contend that membership in the AAR, AWR, TEAER and ERPC, or in any of them, constitutes in itself participation in an alleged conspiracy?

"Answer: No."

D-14-H:

"Does Riss contend that joint participation in proceedings before the Interstate Commerce Commission or before any other regulatory agency, or in the courts, by the defendants, or any of
18,822 them, is evidence of an alleged conspiracy?

"Answer: No."

E-V-5:

"Does Riss claim that any of the defendants violated the antitrust laws by participating in MC-200 Sub-84?

"Answer: No."

E-V-6:

"Does Riss claim that it was a violation of the antitrust laws for any defendant to solicit the participation of others in that proceeding?

"Answer: No."

F-2:

"Does Riss claim that it is a violation of law for a railroad or railroad association to attempt to interest public organizations in the activities of Riss, or of truckers, of explosives generally, or of long-distance truckers generally?

"Answer: No."

F-6:

"Does Riss contend that joint action by railroads to assert their generally common interest in opposition to the grant of operating authority in a proceeding before a regulatory agency is a violation of the antitrust laws?

18,823 "Answer: No."

G-1:

"Does Riss claim that the organization of a committee of counsel to represent a number of railroads in a proceeding before the Interstate Commerce Commission is a violation of law?

"Answer: No."

G-2:

"Does Riss claim that it is a violation of law for a railroad or an association of railroads to expend funds to publicize the activities of truckers?

"Answer: No."

G-3:

"Does Riss claim that it is unlawful for a railroad to expend funds in the preparation and presentation of evidence before the Interstate Commerce Commission in opposition to an application for increased authority by Riss?

"Answer: No."

H-11:

"Does Riss contend that the quotations of Section 22 rates of which it complains were made with the specific intent to exclude Riss alone from the business of transportation explosives?

18,824 "Answer: No."

H-13:

"Does Riss contend that each railroad defendant participating in one or more of the Section 22 rate quotations of which plaintiff complains acted with the specific intent of eliminating Riss as a competitor for explosives traffic?

"Answer: No."

H-14:

"If the answer to the preceding question is in the negative, state which if any defendants are alleged to have acted with such intent.

"Answer: None."

An admission, paragraph 4, paragraph 31:

"The elimination of Riss from the business of transporting property in interstate commerce would not result in the monopolizing of land transportation by the defendants."

Interrogatory H-37:

"Does Riss contend that participation by a defendant railroad in the establishment in a Section 22 rate for the transportation of explosives applicable to more than one railroad, of which Riss complains, is in itself evidence of participation in the conspiracy alleged in the complaint?

18,825 "Answer: No."

H-38:

"Does Riss contend that any defendant railroad acted to establish Section 22 rates for the transportation of explosives applicable to more than one railroad, of which Riss complains, except pursuant to and in conformity with the terms of agreements validly approved by the Interstate Commerce Commission under Section 5-A of the Interstate Commerce Act?

"Answer: No."

* * *

DEFENDANTS INSTRUCTIONS

* * *

18,829 THE COURT: Whenever an instruction is denied, your objection will be noted in the record. Unless I think an argument ought to be had on an instruction, or unless counsel wishes to argue the point, we will just pass, and go right through them.

MR. RHOADS: May I ask if an objection by one counsel will cover any possible objections by all?

THE COURT: That's correct. Objection by one counsel will cover an objection on behalf of all counsel.

MR. RHOADS: Thank you, sir.

THE COURT: All right.

Now we will take up the three Byoir instructions first, because they came in last:

Now, Byoir Instruction 1-18-1 is denied.

Byoir Instruction 1-18-2 is denied.

Byoir Instruction 1-18-3 is denied.

We come now to the instructions beginning with the Series A-1.

MR. PIERPOINT: Your Honor, I take it my objection to the denial of those instructions is noted without my rising.

THE COURT: That's correct. The objections will be noted to the

18,830 denial of the instructions without rising.

* * *

DIRECT EXAMINATION OF MR. JAMES M. SYMES

BY MR. McGLOTHLIN:

* * *

19,046 Q. In addition to belonging to the Association of American Railroads, the Pennsylvania Railroad belongs to a regional group, does it not?

A. It does.

Q. What is that?

A. Eastern Presidents Conference.

Q. Eastern Railroad Presidents Conference.

Now since there is a national group already in the AAR, why does the Pennsylvania belong to the ERPC?

A. Well, we think it is a good idea for the presidents of the eastern railroads to assemble periodically. It is a luncheon meeting. It doesn't last too long. We exchange ideas on different things. There is no power behind anything to act, except to exchange ideas. And I think it is a good thing for the group to do that very thing.

Q. Are there any common characteristics, you might say, between railroads that operate in the east as contrasted with common characteristics of railroads that operate west of the Mississippi?

A. Why there are some. We have much heavier commuter travel. We have a relatively heavy passenger business. So there are different things. We have harbor operations, at New York, Philadelphia, Baltimore and so on, and at Boston. We do have a lot of problems in the east that do not

19,047 occur in the other territory as much as they do there.

However, we also think as to the regional division of the railroads, generally known, it is good for each region to have their own conference.

Q. I believe you said this was a luncheon meeting.

A. Generally that is right. We have lunch, and adjourn shortly afterwards.

Q. You attended such meetings while you were president, did you not?

A. I have, yes.

Q. Can you give me any idea of the frequency with which such meetings are held?

A. Well, they are scheduled for every month. But there are always several missing in a year. I suppose they would run about nine a year, usually dropping a couple in the summer and one in the winter.

Q. You said you talked about various problems that are common to the railroads in the eastern region. Did you ever talk about such things as

pass practices and policies with respect to the issuance of passes?

A. Oh yes. That is one of the things that has caused a lot of conversation.

Q. You mentioned problems with respect to the New York harbor, I believe. What topics have you ever discussed with respect to the New York harbor?

19,048 A. Well, as to whether or not there would be economies in pooling the marine equipment of the various railroads in New York harbor, and have it under one head, instead of every railroad operating their own car boats and tugs and so on.

We have also talked, for example, of these numerous interchange points I speak of as between railroads, to see whether or not we couldn't close a number of them -- and we have closed a considerable number of them.

And contributions to various organizations sometimes are discussed there as to whether or not, for example, the World's Fair now -- they are figuring on a new one. And that was discussed among the Eastern Railroad presidents as to what if any action should be taken in connection with those kinds of requests.

Q. Are labor matters ever discussed, such things as wages?

A. I wouldn't say they are discussed specifically, but they are in generalities, yes. In other words, we have to appoint from the eastern group committees to deal with labor and things of that kind, and to give them the authority to negotiate. Yes, we do that.

Q. I believe rate matters are handled by the TEA for the eastern railroads. Does the Eastern Railroad Presidents Conference determine rates?

19,049 A. Absolutely not.

Q. I believe in one conversation I had with you, Mr. Symes, you referred to the conference as a singing society. Would you explain what you meant by that.

A. Well that was rather facetious. In other words, they didn't have any power to do anything; but we did meet and talk.

Q. In your attendance at Eastern Railroad Presidents Conference, Mr. Symes, did you ever hear Riss & Company mentioned except after this case was instituted?

A. I don't believe I ever have, except in publicity in connection with this suit.

Q. Have you ever heard it suggested at any meeting of the conference that the eastern railroads or railroads generally should get a monopoly of any type of traffic?

A. I have not.

* * *

CROSS EXAMINATION OF MR. RICHARD R. RISS

BY MR. McGLOTHLIN:

* * *

19,225 Q. Did you ship by piggyback over any other carrier than the Pennsylvania Railroad?

A. No, not in the East.

Q. I didn't ask you, in the East. I asked you, did you ship by any other carrier by piggyback?

A. Yes, we used the Katy some from St. Louis to the Texas points and the Oklahoma points.

Q. You said your figures show that you shipped more than this in 1957, and you have mentioned complaints:

Did these complaints come in 1957?

A. All the time, yes.

Q. Well, it came in 1957?

A. Yes.

Q. And you said they came from meat companies, did you not?

A. I didn't say all of them. I said there were some meat shippers that would not allow us to use piggy.

But we had some other shippers that complained because the service was slow.

Q. Some of the complaints came from meat shippers, did they not?

A. Yes.

Q. Were any of those the same meat shippers that you swore in the Freuhauf case cut down their service of you because you didn't give them proper service?

19,226 A. I didn't say -- I don't recall saying that in the Fruehauf case that some of the customers cut down on us because we didn't give them proper service. I don't recall that I said that.

Q. Do you deny that you so swore?

A. I do not recall having said that in the Fruehauf case, that some of the people -- I do recall that Armour & Company was a company that told us if we shipped any more piggyback they would not give us any more business.

Q. And you recall, don't you, that in sworn answers to interrogatories in the Fruehauf case, you identified Armour & Company as one of the companies that either cut down or stopped using you because you didn't give it adequate service? Isn't that true?

A. Armour & Company was one of the companies that demanded that we do not use piggyback service on all of their trucks.

* * *

REDIRECT EXAMINATION OF MR. RICHARD R. RISS

BY MR. WRIGHT:

* * *

19,244 Q. I wanted to ask you a question about the Fruehauf case, Mr. Riss:

This claim that Mr. McGlothlin read you about loss of business, was that one of those claims that was abandoned before you went to trial?

A. Yes, Fruehauf withdrew a good portion of their case and we withdrew --

MR. McGLOTHLIN: Now, Your Honor, this is argument.

THE COURT: This has been gone over, hasn't it? I think we

went over that part in the direct testimony, didn't we?

MR. WRIGHT: I think it would have been a little fairer, though, for Mr. McGlothlin to state what the facts were about the claim, instead of representing that the claim was actually presented in evidence at the trial.

19,245 THE COURT: Gentlemen, you will have plenty of time to argue this case later. I will give you plenty of time, all the time I think you are entitled to. I don't want any arguments made to this jury by way of extemporaneous remarks or whatever you want to call it.

I think we have been over this matter and I think this has been discussed as part of the direct examination. Correct?

MR. McGLOTHLIN: I will be glad, since I have been charged with being unfair --

THE COURT: Well, I mean --

MR. McGLOTHLIN -- I am perfectly willing to say, Your Honor, that I believe the record also shows that during the time Mr. Riss was on the stand, or just before, that this claim was withdrawn from the case in Kansas City.

And I believe this was done on the advice of Mr. Wright.

* * *

DIRECT EXAMINATION OF MR. WALTER J. KELLY

BY MR. WRIGHT:

* * *

19,297 Q. Give your name.

A. Walter J. Kelly.

Q. Spell the last name.

A. K-e-l-l-y.

Q. Where do you live?

A. 2737 Devonshire Place, Northwest, Washington, D. C.

Q. Are you employed presently?

A. No.

Q. You are retired?

A. Yes.

Q. Were you formerly employed by the Association of American Railroads?

A. That is right.

Q. That was during what period?

A. I came to Washington in March, 1937. I retired June 30, 1957.

Q. What was your position with the AAR at the time your retirement?

A. Vice President of Traffic.

Q. How long had you held that position?

A. Since 1949 and I held the same position under the title of Traffic Officer from 1947 to 1949.

19,298 Q. Were you sitting here the other day when Mr. Faricy undertook to describe the work that you did for the AAR?

A. Yes.

Q. Is it fair to say that your work was principally concerned with fairly determining the form of rate quotations?

Mr. Ailes: Your Honor, I think it would help if some time were specified?

THE COURT: Yes.

BY MR. WRIGHT:

Q. Let us take the period from say 1950 through 1956.

A. I furnished technical assistance in the preparation of those section 22 quotations. I also furnished technical assistance in connection with the publication of tariffs involving the general increase, general rate increase cases.

I also was a point of contact between the railroads and the several government departments.

Q. Now, as far as this service you are referring to, as to the formal quotations, you had a rate staff that did that, did you not?

A. No.

Q. You did not have any such people, such rate people working

for you?

19,299 A. No, I had no rate people.

Q. Were you just a one-man department there? Were you the only man working in the department?

A. No, I had a secretary, and a file clerk and a chief clerk that was during that period.

Q. I gather this chief clerk of yours - what did he do?

A. He had nothing to do with rates. He had nothing to do with these Section 22 quotations. He was what we call an "outside man." A contact man.

Q. I take it from what you have just said you did act more or less as liaison with the government agencies, Mr. Kelly?

A. As a contact man occasionally, yes.

Q. And you were or did maintain a regular office.

Q. Now, during this period we are talking about, 1950 to 1957, you were interested in matters of rate policy where they were policies of national interest, particularly with respect to rate policies on government business, were you not?

A. I had nothing to --

MR. GATES: I think we should ask the witness to testify rather than Mr. Wright to be doing the testifying.

THE COURT: Put that in the form of a question.

19,300 We have had enough testifying by lawyers on both sides. Proceed.

BY MR. WRIGHT:

Q. Just tell me this, Mr. Kelly: Did you or did you not receive information from the various Washington representatives of railroads that were concerned with rates with respect to what kind of rates were being made on ammunition and explosives for the Government?

A. Not as a general rule. There was one occasion when I was informed of what the government asked for.

Q. Now, what occasion do you refer to?

A. The occasion when three railroad representatives came to me and told me what had transpired at a meeting the previous day with the Armed Forces.

Q. Who were the three railroad representatives you are talking about?

A. Pat Carnahan of the Southern Pacific and two men from the Cotton Belt. One was McDermott and the other was Gilbert.

Q. And what was the information they gave you about the --

MR. AILES: This gets us into that hearsay problem.

THE COURT: Do you object?

MR. AILES: Yes, sir.

THE COURT: I sustain the objection.

19,301 BY MR. WRIGHT:

Q. What did you do with the information you got from those gentlemen after they gave it to you?

A. I gave it -- I sent it to the three Chairmen.

Q. By the three chairmen, you are referring to whom?

A. At that time I think it was Mr. Fitzpatrick and Mr. Dana, and Mr. Kerr.

Q. And they were respectively chairmen of what organizations?

A. Mr. Dana was the Western Traffic Association and Mr. Fitzpatrick the Traffic Executives Association, Eastern Railroads, and Mr. Kerr, the Southern Freight Association.

MR. WRIGHT: That is all.

* * *

DIRECT EXAMINATION OF MR. J. EARL HUMMER

BY MR. WRIGHT:

* * *

19,327 MR. WRIGHT: Plaintiff's 325 is a sheet with Mr. Hummer's handwriting on it, which is headed "Items Included in Group 631, but not in Section 22 Quotation.

This has been marked for identification as Plaintiff's Exhibit 325 now.

Thereupon,

J. EARL HUMMER

a witness called on rebuttal, having been previously sworn, was further examined and testified as follows:

DIRECT EXAMINATION

BY MR. WRIGHT:

Q. I will show that to you, Mr. Hummer, and ask you how you prepared that, and what they show?

A. I took the uniform freight classification which was in effect on September 11, 1955, and compared it with the Group 631 of the AAR Commodity Classification.

MR. SHEA: Your Honor.

THE COURT: Yes, sir.

MR. SHEA: Quite clearly, the best evidence on this are the Section 22 quotations and the 631 classification.

19,328 THE COURT: Will you speak louder?

Section 22 quotations and what?

MR. SHEA: I say quite obviously the best evidence on this matter are the Section 22 quotations themselves and the 631 Classification, and I object to this testimony of Mr. Hummer on the ground that those are in evidence and are the best evidence.

THE COURT: Well, let's see if he can develop that.

Did he use these that are in evidence, these figures or quotations?

THE WITNESS: I did.

BY MR. WRIGHT:

Q. Mr. Hummer, I gather you did examine in connection with your prior testimony, and in connection with this, the Section 22 quotations that are in evidence here that accomplished the general rate reductions that went into effect in 1955 and 1956?

A. Yes, I did.

Q. And did you make a comparison of the items in those quotations with the items in the Commodity Classification 631?

A. Yes, I did.

Q. And do you have the result --

MR. SHEA: Well, now, once again, if the Court please, my objection is that Mr. Hummer ought to be a witness and not someone who is making arguments.

19,329

THE COURT: All right.

MR. SHEA: The testimony is in. If Mr. Wright wants to make any arguments -- I mean, the evidence is in, and if he wants to make any arguments as to the best evidence, why, that's all right.

THE COURT: As I understand, he examined the Section 22 quotations that are in evidence. Is that correct?

THE WITNESS: I did.

THE COURT: And you used that, I suppose, as a basis for, partially as a basis for this exhibit?

THE WITNESS: That's right.

THE COURT: All right, I will let him testify.

And you may cross examine him on it.

* * *

19,334 Q. Have you ever tried to determine before what items were or were not included in a particular quotation?

A. I don't know whether I have as to a particular Section 22 quotation, but I have dealt with classifications. My whole experience in transportation.

19,335 Q. And you are familiar, are you, with this classification 631?

A. Yes, I am.

Q. And what the various items in it are?

A. I am familiar with the whole AAR Classifications. It has been called the I. C. C. classification, but the AAR furnished the detailed items

under each page or group described by the I. C. C.

Q. You also, I gather, testified before with respect to the particular quotations that are in evidence here, that are the subject of the exhibits you have in front of you; isn't that right?

A. Yes, I did.

THE COURT: Isn't there a chart in evidence that is prepared that this gentleman testified to, a large chart, or a number of charts?

MR. WRIGHT: There are a number of charts. I have some more here with respect to those rates.

THE COURT: I remember.

I am sure the jury remembers.

I think he is qualified.

I will let him testify.

So, let's proceed.

BY MR. WRIGHT:

Q. Now, Mr. Hummer, can you tell us just what the charts that you have there that you compared does show?

19,336 A. It shows by reference to the item number of the Uniform Classification No. 3 the articles in the Commodity Group 631 which are not listed in the Section 22 quotations that are involved here.

The Section 22 quotations also list item numbers and it will be noted that none of these item numbers are shown in the Section 22 quotations.

Q. Now, you have listed those items that are in the 631 Classification but which are not included in the Section 22 quotations in the suit here on that sheet, have you?

A. Yes. I might add that the descriptions in Commodity Group 631 are in somewhat different terms and it does take some knowledge of classification to determine just which classification item covers an item in 631.

Q. Could you just read enough of the items so that we will have a general idea of the kind that are in 631 but not in the quotation?

A. The first item, under general heading, "Ammunition, Explosive, Incendiary or Gas, Smoke or Tear-Producing," that is in the general heading.

1872 -- 1840 -- "Cartridges, small arms, blank or loaded, NOIBN," indicates "not otherwise indicated."

And so on, in the "Ammunition, Not Explosive, Incendiary, Gas Smoke nor Tear Producing."

19,337 Item 1872, Aerial Bombs, Empty, Aluminum or Parts thereof" is not listed in the quotation.

Q. Then did you also list on the sheet the classification that those items fell in, the rate classification?

A. Yes. I listed opposite each item the rating given in the Classification No. 3, together with the minimum weight applying to such rate.

* * *

DIRECT EXAMINATION OF MR. JAMES A. REARDON

BY MR. LAYNE:

* * *

19,420 A. Yes, sir. I worked with the interline carriers of Riss & Company in all parts of the country, working out our division of revenue, our trailer interchanges --

Q. What do you mean "division of revenue"? I think we know, but perhaps you can tell us your view of "division of revenue".

A. On a movement that would require the participation of two carriers, say Riss and another carrier, the division of revenues that Riss would receive as against that of the interline carrier or connecting line.

Q. And did you have anything to do with the interchange of equipment between interlines or connecting lines?

A. Yes sir, we worked out our trailer interchange agreements with the carriers with whom we interlined.

Q. And this was part of your responsibilities?

A. Yes, it was.

Q. Did you have any responsibilities or duties with respect to rates, charged by Riss & Company, for the transportation of ammunition and explosives?

A. Yes, I did. I consulted with our traffic Department on basically the Section 22 law, to be forwarded to the government.

Q. What would you consult with them about? What were your duties?

19,421 What was your responsibility?

A. My responsibility was consulting with them as to the rate that was to be sent into the government under Section 22, to ascertain whether or not Riss & Company would be able to make any money at the rate that was then involved.

Q. Did you do this on a regular basis? Was this a regular occurrence, your consulting with the traffic department? Or was it seldom or frequent? What was the frequency of it?

A. It happened with great regularity, yes sir.

Q. And what kind of information did you supply to the Traffic Department with respect to Riss' cost or rates to be charged?

A. Sir, when I found that a new rate was to be put into effect, the traffic department consulted me or I consulted them and we sat down and worked it out and I let them know whether or not with the rate that was to be put into effect, whether or not Riss & Company could make money in their operation at that rate.

Q. Now under what circumstances would these rates be brought up, I mean, such a rate quotation be brought to your attention with which you supplied this information.

A. There were numerous changes of rates under Section 22's. For instance, we would be participating in a movement installation -- a

19,422 movement from one government installation, and be fulfilling our equipment supplies, getting our equipment lined up to meet the commitment we were going to make. Then they would turn around the next day and find

-- we would turn around the next day and find we had no freight to haul, that the rate was cut.

We would then start investigation and finally find out exactly what the new rate was and if we could file a rate under Section 22 that would enable us to haul the traffic or to be equal, to get equal with the rate that was in effect.

THE COURT: Mr. Reardon, I think if you would move about six inches closer, I think that microphone will amplify your voice. Just speak in the tone that you are now speaking.

THE WITNESS: All right.

By Mr. Layne:

Q. For what period of time did you serve as assistant to the Vice President of the Government Division?

A. From maybe June of 1952 -- from June of 1952 to June of 1956.

Q. And during this period of time were you consulted with respect to rate quotations and with respect to the costs of operations of Riss & Company?

A. Yes, I was.

19,423 Q. That is of the Government Division of Riss & Company?

A. As far as the government operation was concerned, yes, sir.

Q. Now during, at some time in 1955, was your attention drawn to a Section 22 quotation filed in October 1955 by certain rail carriers which had the effect of reducing, or of placing into effect a Section 22 quotation for the movement of ammunition and explosives, specified a rate of 45 per cent of first class, and 80 per cent of first class in official territory; and 55 per cent of first class in western trunkline territory?

First, let me ask you are you familiar with the territory?

A. Yes, I am.

Q. Well, was such a quotation drawn to your attention?

A. Yes, it was.

Q. And did you consult or did you supply any information to Riss & Company or any information to Riss with respect to that quotation, or such

a rate level?

A. Yes, I was asked my opinion as to what Riss & Company could do operation-wise in meeting the rate that was established. On my recommendation -- it was my recommendation to the company at that time that we could not
19,424 make any money.

* * *

19,429 Q. Mr. Reardon, are you generally familiar with the rates charged by Riss & Company for the transportation of Riss & Company for ammunition and explosives?

A. Yes, I was.

19,430 Q. Were you familiar with the rates charged by competing motor carriers with Riss & Company for the same thing?

A. I attempted to keep abreast of that, yes.

Q. Why did you attempt to keep abreast of it?

A. So that we could be on a competitive basis with our competition, and by having equal rates be able to haul the commodities involved.

By Mr. Layne:

Q. Can you tell me this, Mr. Reardon: Was the October 20th, 1955 rate quotation, at 45 per cent of first class and 80 per cent of 45 in official territory, and 55 of first class, in the western trunkline territory, at the level established by Riss & Company? Was it the same or lower, or what was the relationship to the rates?

MR. McGLOTHLIN: May I object?

THE COURT: Yes. Don't answer that.

You object to him stating what the rate was, even what the rate was at that time?

MR. McGLOTHLIN: I object to this as not the best evidence.

Furthermore, there is no proof that there was any rate level. The proof shows that there were rates all over the lot, your Honor, from point to point, in trucks as well as rails. You ask a question about that, it doesn't
19,431 mean anything.

Now if there were rates that Riss had filed, Riss had a tariff, had a book that showed its rates --

THE COURT: Isn't there a tariff book in evidence?

MR. McGLOTHLIN: No, sir.

It has never been brought in and proved.

But any characterization by witnesses to rate level when there were thousands of them, seems to me quite wrong.

THE COURT: I will let you answer. Rephrase the question.

By Mr. Layne:

Q. Tell me: Riss's rate level was at 45 of first class, 80 per cent at 45 --

MR. McGLOTHLIN: It is the same question.

THE COURT: I think he would be qualified to answer to that.

He may not have the records to show exactly what they did. Or what they were. But he would certainly know as a rate man, or at least an experienced employee, he ought to know generally what the rate was.

MR. McGLOTHLIN: Could we have it alluding to two points and use that as an illustration to have something concrete here? Take any two points.

19,432 THE COURT: All right.

MR. LAYNE: I agree about it. But for example, the statement made to you that we have never presented the rates which Riss & Company charged before you, is just absolutely incorrect. Because the exhibit which is introduced in this case shows the level charged by Riss for every movement it transported from 1949 through 1957. In cents per hundred pounds.

THE COURT: Was that in pounds?

MR. LAYNE: That is exactly right.

MR. McGLOTHLIN: Mr. Layne is correct. I was referring to the tariff, rather than the material in '37. I withdraw what I said. It is in '37, and that makes this entirely cumulative. You have it written down

in dollars and cents by days and place to place. Now we have no need for a man generalizing that.

THE COURT: If it is in evidence, it is some of the exhibits, I understand.

MR. BALL: This is an opinion about the impact and meaning of an exhibit that the jury can interpret.

THE COURT: Anyway, the jury has heard the exhibits. The information is in there, they can look at them and have access to every exhibit.

By Mr. Layne:

Q. Let me ask you this, Mr. Reardon: Was a rate quotation made
19,433 by certain railroads in March and April of 1956 drawn to your attention?

A. Yes, it was.

Q. Did you participate or did you make any analysis of that rate so far as Riss & Company was concerned?

A. Yes, I did.

Q. Now tell me, after March and April 1956, did any change come about in the government division of Riss & Company?

A. Yes, sir. The Government Division of Riss & Company, due to that action, was dissolved --

MR. BALL: Move to strike.

THE COURT: Just a minute. Don't state your conclusion of why it was done. Just state the fact of what you know about it and what happened after the period mentioned by Mr. Layne. Just what happened.

THE WITNESS: Yes, sir.

After that period of time the Government Diviston of Riss & Company was dissolved and integrated in with the commercial division of the company.

* * *

INSTRUCTIONS TO THE JURY IN REFERENCE TO SEPARATE TRIAL OF COUNTERCLAIMS

19,803 THE COURT: Ladies and gentlemen of the jury, you will recall that in my opening remarks to you at the beginning of the trial I went into some detail concerning certain counterclaims which had been filed by some of the defendants in this case against the plaintiff. You will also recall that counsel for these counterclaims made certain statements to you concerning the counterclaims during the course of their opening statements, and you will also recall that on a few occasions during the trial these counterclaims were mentioned. Now, for rea-
19,804 sons which do not concern you, the Court has seen fit to order a separate trial of these counterclaims before another jury at some future time. You are not to draw any inference adverse to any party from this action by the Court as to those counterclaims. This separate trial of the counterclaims was ordered by the Court on its own motion under the authority granted to the Court by the Federal Rules of Civil Procedure, and was not done at the request of any party to this litigation. By ordering a separate trial the Court does not indicate that the plaintiff has a good case or that the defendants have a good case, and this applies to the main case as well as to the counterclaims. Therefore, you are instructed to disregard any earlier remarks by the Court or counsel in connection with these counterclaims and any opening statements by counsel in regard thereto, and any remarks made concerned during the trial; in other words, put the counterclaims out of your mindsentirely. They are not in issue in this case. All right, Mr. Layne, are you ready?

* * *

19,806 ARGUMENT ON BEHALF OF PLAINTIFF BY MR. LAYNE

And if I were to make a summary, my summary of that would be this, that what we have here, the case in trial, is a conspiracy of the defendants to monopolize the business of transporting government ammunition and explosives by activities, each of which standing alone in and of itself, would be entirely lawful, but which in combination and for the purpose of monopolization are unlawful under the Sherman Act. Now we say the purpose of the defendants

was to monopolize this transportation business for all of the railroads, not just the defendant railroads, by whatever means that were needed to accomplist their objective. We say that the means that were chosen to accomplish this result were directed against long distance explosive truckers in general, and Riss in particular, and we say that the means that they used to carry out this conspiracy and to achieve this objective were, first, a concerted effort to injure the good will and reputation of truckers of explosives, and particularly Riss and Company, by defamatory public relations campaign carried on through
19,807 the AWR, the Association of Western Railways and Carl Byoir Associates. This propaganda campaign assisted and it in turn fed upon a campaign to get the Interstate Commerce Commission, and the state regulatory agencies and the Department of Defense itself to eliminate the use of trucks for long distance transportation of explosives. We say that the second method to be used, the second series of acts, or group of acts, was an unsuccessful campaign to get state legislatures to impose five thousand pound restrictions upon trucks transporting explosives so as to accomplish an elimination of long distance trucking of explosives, and finally, we say that they used a general reduction in railroad rates on government explosives traffic in October 1955 and March and April 1956 which excluded Riss from this business and substantially injured Riss and Company, not only in its transportation of explosives, but in its business of transporting other freight. We say that the reasons that the rate weapon used in 1955 and '56 were not used earlier, and it was the ultimate weapon, were that, first, that these general rate reductions, the depth of the rate reductions, were not warranted in view of the rising costs of transportation, that performed the transportation, and a substantial loss that these deep reductions would mean to the railroads in their own revenues in order to accomplish this objective. They also hoped that the Interstate Commerce Commission, the Public Utilities Commission of Ohio, the state legislatures,the regulatory agencies in general,
19,808 or the Department of Defense, might give them the traffic or might do the job of monopoly for them without the necessity of cutting their own rates, and finally, they didn't use the rate weapon prior to 1955 and '56, because they

did not want to jeopardize their defense of the then pending reparations case brought by the United States against the railroads, which claim substantial overcharges on the basis that the general level of 65% of first class was unjust and unreasonable. We say that the general rate reductions in '55 and '56 substantially injured Riss and Company in two respects. First, it eliminated Riss and Company as a substantial trucker of explosives; and secondly, the loss of the explosives business severely injured the ability of Riss and Company to transport the other general commodities which Riss was authorized to transport; and finally we say, in our theory of the case to you and in this summary, the extent of the injury to Riss' business should be measured by you on the basis of the difference between the actual value of Riss and Company as a going business on January 31st, 1958, the date on which this Court allowed a supplemental complaint to be filed, and the last day for the purposes of this case in which we may discuss damages, and what the value of Riss and Company would have been on January 31st, 1958, if there had been no such conspiracy.

* * *

19,809 So, let me turn then to my part of the job, and first let's talk about the origin of this conspiracy. The key to participation in the unlawful conspiracy is knowledge of its unlawful purpose. In factual terms in this case, as you know, and I'm sure as you have been told, this purpose may be best described as a purpose to obtain for the railroads as a whole, at least 90% of the government's ammunition and explosives traffic, and to obtain it without regard to the competitive merits of any railroad, any particular railroad or any group of railroads, as competitors. Their only competitors for the traffic are truckers and the purpose therefor was necessarily a purpose to exclude trucking companies from the business without regard to the competitive merits of the trucking companies. They were to get 90% of the traffic for themselves without competing for it. They wanted it without regard to whether they were competitive.

19,810

The railroads' conspiracy to monopolize the traffic was directed against Riss and Company because Riss was their principal competitor for the

railroads with the traffic. Now I think you should understand very clearly that there is no claim here by us that the railroads intended to monopolize the business of transporting explosives for the government merely by eliminating Riss and Company, although the elimination was necessary to obtain the monopoly. We do not claim that the railroads, who are the defendants in this case, were the sole parties to, or the only beneficiaries of the alleged conspiracy, which by definition embraces all railroads which carried munitions for the government.

* * *

As I have said, the conspiracy is one which is illegal by virtue of its monopolistic purpose, the purpose the railroads have, rather than merely 19,811 because of the acts by which it was to be effectuated, and therefore an essential element in the participation in this conspiracy is knowledge of this unlawful purpose, and so it will be, I think perhaps helpful to you, if at the outset of the case I reviewed some of the significant evidence that established beyond shadow of a doubt the existence of the conspiracy and the knowledge of defendants of the purpose to monopolize this traffic and to eliminate Riss and Company.

* * *

This is a confidential memorandum prepared by Mr. Kerr, Chairman of the Southern Freight Association, with respect to a conference which was held in Washington, D. C. on March 10th, 1950, concerning relations between the rail carriers and government agencies as to traffic matters, and Mr. Kerr prepared a confidential memorandum of this conference which included at the conference the following people, according to his memorandum, which is in evidence here as Exhibit 40:

* * *

19,903 This brings us in time to a point just prior to the use of what I have called the ultimate and successful weapon in this case, the one which the defendants always had in contemplation, but which, as any monopolists, they hoped they wouldn't have to use because it would mean they would have to cut down their profits:

You will recall that at the meeting in March, 1950, the railroads had claimed that they were entitled to a monopoly of the government traffic, 90 per cent, regardless of rates. They hoped, of course, to get a monopoly without using rates as a weapon, because, when you cut your price, you get less.

But the government wouldn't give it to them on a silver platter. The government contended, as any buyer would contend, that "You have to compete for any traffic, you have to compete for my business."

Even the top levels that Mr. Kerr suggested wouldn't give them the traffic, apparently, and of course we know that Mr. Alderman, the counsel for the railroads and the counsel for the Southern and who was also the Chairman of the railroad counsel in connection with the Reparations case, and the Chairman of the Eastern, Southern and Western rate groups, had been unsuccessful, as Mr. Faricy described it -- they had come to a stalemate -- in negotiations to keep the traffic to the rails where it properly should be and at
19,904 the same time to protect the carriers from reparations cases that they were then engaged in.

So that at 1951 they had been unsuccessful in obtaining either from the people that Mr. Kerr talked to or from the top level that they subsequently talked to and reported by Mr. Faricy, of having the monopoly handed to them by the government.

Now, the defendants also hoped that it would be possible by their combined public relations and legal attack to gain the monopoly objective, drive the trucks out of the business, without rate reductions, and that is set out in the telegram sent by Mr. Edgar Hill who was at the time the Chairman of the Central Territory Railroads Freight Rate Committee, a sub-organization of the TEA, and who you will remember Mr. Hill subsequently became Chairman of the Traffic Executives Association, Eastern Railroads.

* * *

ARGUMENT ON BEHALF OF PLAINTIFF BY MR. WRIGHT

19,946 Now, you will recall that there was one matter that the defendants' expert, Mr. Gordon, who you will recall covered Pittsburgh -- a firm of consolidated engineers which has an international reputation in the management field and the witness, Mr. Gordon, himself, I gathered, has a similar reputation as a railway cost accountant and a management expert, -- and Mr. Riss agreed upon and that was the importance of balance in the motor carrier business in determining whether or not a motor carrier made a profit or a loss. And, by "balance" he was referring to this problem of balancing movements in one direction with movements in another so that you do not have an excessive amount of what is called deadheading. There were miles where you carry empty trailers to get to the point where you want to pick up freight.

As you have heard in connection with the Sub 60-TA matter, motor carriers, unlike railroads, are subject to very arbitrary restrictions as to the traffic they can pick up and the traffic they can deliver. There are certain 19,947 points that they can serve, that they can deliver commodities of a certain kind, but they cannot pick up there. There are others where they can pick up that commodity but they can not deliver. There are points which are actually on the routes, but those points cannot be served.

The result of that is, of course, that this matter of balancing traffic with movements in both directions is an extremely difficult, delicate operation for a motor carrier and if at any point anything occurs which throws the traffic out of balance, you have a serious impact of course on your earnings.

Now, the evidence shows in detailed form exactly what happened to the explosives traffic of Riss & Company throughout this whole period, and that is in the form of these IBM runs that were put in evidence by Plaintiff and they are in four volumes - marked Exhibit 37-A, B, C and simply No. 37.

These volumes, you may recall, were put in when Mr. Tate was on the stand. He was in charge of their preparation and he explained what he had done, how they were prepared and there is in front of each of the exhibits a key as to exactly what the various volumes show.

You will recall that this was done for the period 1949-1957.
19,948 These volumes show every shipment that occurred during that period of so-called A and B Explosives. You will recall the A and B Explosives are the more dangerous ones. The so-called Class "C" explosives are the explosives which have an explosives sound. They may be shells or bomb casings, or something of that sort, but the explosives components are not in them, so they are not high rate of traffic as the A & B Explosives are, and for the most part, they were not included in these rate cuts as Mr. Hummer demonstrated when he put in this exhibit which I think is No. 285 which describes the kind of inert traffic that is in this general classification 631, ammunition and explosives and other dangerous articles but which was not included in these rate cuts in question. What he did, if you will recall, was to exclude from his listing in these exhibits any class C shipments except as Class C explosives might have been mixed in with a shipment of A and B explosives, then they are in here. If they were not mixed in, they are not in here. They are excluded.

But these exhibits that I have just referred to here do have on them the detail which I will only describe to you, which you must examine yourself to appreciate and which gives you the precise evidence in black and white form as to exactly what the impact of what the defendants did on this explosives busi-
19,949 ness was at any particular time between any particular points and I will just refresh your recollection as to what you have here. These, as I say, are all of the shipments. There is a line for each shipment that occurred during this whole period 1949 through 1957 and on each line the first thing you see is the origin point. Each of these is arranged alphabetically by origin points. The first volume here, pages 1 through 216 covers the origin points from Arkansas through Indiana. This is arranged alphabetically by states and the points within the state are also alphabetically arranged.

The second volume, 37-B which has pages 217 through 481, includes origin points in Indiana, Charlestown--that is Indiana Arsenal through the Kansas Ordnance of Kansas.

The third volume has the same data, that is, 37-C, pages 482 through 814, origin points of Kansas through New Jersey, and the last volume which is 37 has pages 815 through 1132 lists the origin points from New Mexico through Wisconsin and then some additional miscellaneous points.

Now, in order to facilitate for your own use an analysis of this exhibit, I prepared some markers which I inserted here which enable you, with a minimum of difficulty to look at the shipments and tonnage that moved, the rates -- everything else that is shown here -- for the pairs of points that were
19,950 put on the charts 210, 211 and 212 that you will recall were prepared when Mr. Hummer was testifying and shows you the points where this -- you cannot put all three up. Just put 210 and 211 up.

MR. LAYNE: This is 210.

MR. WRIGHT: Put 211 up alongside of it. The jury will recall that, of course, there is data on both sides and 212 which has similar data. They cover there about 27 pairs of points.

What you have there on those charts if you will recall is the rate per hundredweight as it appeared in the interrogatory answers furnished by the defendants, and then Mr. Hummer computed what the actual dollar amount of the freight would be on 90,000 pound shipments, and made that conversion in those figures which appear under the column under 90,000 pounds; and then computed the percentages of decrease.

What I wanted to do at this point, however, was not to discuss with you what these exhibits show as to rates and the other matters. You have a cents-per-hundredweight here in the 8th column which you can compare with that but to show you that these are explosives movements, simply by taking these exam-
19,951 ples, were themselves movements which were highly unbalanced. This was one-way traffic and had, in order to be profitably handled, to be handled with commercial traffic going the other way, or balanced that way because that was the only way this deadheading problem could be met and a profitable balance maintained that enables you to earn money handling the traffic.

Now, the first point on there was Shumaker, Arkansas, to DeSoto, Kansas. That is the Sunflower Ordnance and is located at Desoto. I put this

one marker in this first book, exhibit 37-A, to indicate where you would find a shipment from Shumaker, Arkansas, to Desoto, Kansas, if one had occurred. In this instance, there was no movement in that direction. Now, that does not appear on here by a line that says Desoto or Shumaker to Desoto, zero. It just is not in here. You know there were no shipments because you look at the point the destination points that appear opposite the origin Shumaker, and you see that at the place where the shipment would appear from Shumaker to Desoto if there was one, there is none shown.

So that from this exhibit you can see there was no movement in that direction at all.

Then if you turn over, however, to the origin point which shows the 19,952 shipments out of Desoto, in the particular point where it shows Desoto to Shumaker, that is at page 509 and you look at the total for just the year 1955 you will see that during that year alone there were 8,979,263 pounds that went from Desoto, Kansas, to Shumaker, and there was none returning.

And I will just take these points as they appear in here, this probably is not the same order that is up there. The next one is Avondale, Colorado which is where the Pueblo Ordnance is, to Charlestown, Watson, Indiana, which is the Indiana Arsenal, and there you find at page 26 or rather, 27, the total shipments from Avondale, Colorado, to Charlestown-Watson, Indiana for the year 1955, and there you find that there was a total of 83,000 pounds -- excuse me, I read it wrong, read the wrong total. The total for 1955 -- these are arranged this way. You see one star after a total. That is the total for the month. If there are two stars after the total, that is the total for the year. Three stars is the total for the entire period.

When you read these, you want to remember that the last digit here which represents the year, it is just a single digit, you do not see 1954 or 1955, you just see one, two, three, four, five, or six which indicates the shipment 19,953 occurred in that year. Of course, the date is shown in the conventional way, 12-1-4, for example, means December 1, 1954.

In this case, on this movement from Avondale to Charlestown-Watson, the total for 1955, the two-star total is 707,414 pounds.

Then, if you want to look at the reverse movement, Charlestown-Watson, Indiana to Avondale, you will find that over on page 227 here, and the 1955 total in that direction is 3,246,079 pounds.

Then you go to the next point here which is shipments from Avondale, Colorado, to Parsons, Kansas where the Kansas Ordnance Plant is located. There you will see the Avondale to Parsons shipments for the year -- excuse me. In this case there is again an absence of movement from that direction shown on the face of this exhibit at page 39, where the Parsons destination would appear, Kansas Ordnance, if there were one.

And, if you want to look at the reverse movement from Parsons to Colorado, you look at the book that has Parsons, Kansas in it. It is Kansas Ordnance.

You turn to page 406 which shows the movement in that direction from Parsons to Avondale or Pueblo Ordnance. You will find the movement for 1955 in that direction was 14,561,445 pounds.

19,954 Now, I do not want to bore you by taking you through each of these pairs of points. I just want to point out that they are all here, and I, of course, intend to leave these tabs in here for the use of defendants' counsel, and I think they would be very helpful if they were left here for you and you can see for yourself the extreme lack of balance in these movements, that they are one-way movements. You can also compare for yourselves the rates per hundredweight. You can see exactly what happened in 1955, 1956, any other year not only with respect to these points that I have indicated by the tabs so that you can match them up with 210, 211 and 212, but any point at all that Riss served.

Now, the fact is, and this fact was demonstrated by the defendants' own evidence and own witness, Mr. Field. I know you recall this from the New York Office of Price-Waterhouse, that this loss of this or the effect of throwing this, the effect of abruptly throwing this business out of balance by that very severe loss of explosives traffic that occurred as a result of the rate

cut in the year 1956, you can see from the figures there you have a two million loss, a loss in excess of two million dollars in that business. The money figures are in the left there. It is three million-six down to a million--what is it--one million four ninety-eight? About two million one in that year, and then it drops off another million -one the next year..

19,955 You can see the impact, the effect of that on the Riss business was to convert an operation, a common carrier operation which was then earning, according to Mr. Fields' figures, a profit of a million-one to a loss figure for 1956 of more than $500,000.

Now, these figures of Mr. Fields, if you will recall, he was, as I say, with the New York office of Price-Waterhouse. Price-Waterhouse had been hired by the defendants to make a very extensive investigation of Riss & Company's whole operation, not just Riss & Company, but TM&E and the affiliated companies that owned equipment that was used in the operation by way of leases to Riss & Company. As you will recall, they had a six-man team of accountants out in Kansas City, the Price-Waterhouse office there, for a great many weeks all under the supervision of Mr. Fields, and one of their purposes was, as he stated, to give you the best picture that could be gotten, removing the operation itself, removing such distortions as would occur from the combined ownership of Riss & Company and these affiliates that owned equipment buildings, and so forth.

* * *

ARGUMENT ON BEHALF OF DEFENDANTS:

20,238 THE COURT: Mr. Ball, I don't like to interrupt you now.

I think the jury ought to know what the law is, now, on this particular point.

I am going to charge them later, and I think right now I will tell the jury what the law is and let them make up their mind whether or not what you said was immunized under the First Amendment.

MR. BALL: I am not claiming, if the Court please, they were immunized. I had thought I had stated --

THE COURT: Well, I will tell them what the Court is going to charge you on the question of free speech and the Court is not indicating one way or the other the way the Court feels about this matter, but you ought to have this law before you and apply Mr. Ball's argument to that.

20,239 The Court will charge you as follows in connection with this matter of freedom of speech.

And Mr. Ball has touched on this, I think.

Now, public relations activities, as I have told you during the trial, in and of themselves are not unlawful, but they cannot be used to violate the anti-trust laws, and I do not suggest that they were or were not so used.

That, again, is for you, the jury, to decide from all the evidence.

It has never been deemed an abridgement of speech or press to make a course of conduct illegal merely because the conduct was in fact initiated, evidenced or carried out by means of language either spoken, written or printed.

Such an expanse of interpretation of constitutional guarantees of speech and press would make it practically impossible to enforce laws against agreements in restraint of trade.

Further, you are instructed that sponsoring legislation in and of itself is not unlawful -- as Mr. Ball has contended, and other attorneys, I think.

Therefore, If you find that the defendants or any of them engaged in an effort to obtain the enactment of any 5,000-pound bills which were introduced in various Legislatures, such an action was not in itself unlawful. However, if done pursuant to a pre-existing conspiracy to drive a competitor out of the explosives business, or to monopolize or to attempt to monopolize such business, such activities in view of the over-all plan, if there was such a plan, would violate the anti-trust laws.

These issues are for you, the jury, alone to decide.

* * *

. . .

BY MR. McGLOTHLIN:

* * *

20,782 I prepared a chart which, let me tell you, is not an exhibit. You are going to see it now, you will never see it again.

I do this simply because it does numbers.

This is operating revenues, and the numbers are the numbers you see on this chart here.

This is what Riss & Company did, by Mr. Riss' testimony, in comparison with the six companies which Mr. Riss says are comparable.

Mr. Riss' change from '55 to '57 was to go up $1,200,000.00.

Of those six, only two others went up.

The company he says is most comparable to him went down $653,000.00.

Now, believe me, I do not contend that this proves anything, because those companies were not comparable to Mr. Riss'.

I do say that if you disagree with me and believe Mr. Riss, that the results were comparable, that the companies were comparable, and that you take, as you must take, that the first possible effect of the defendants upon Riss was in October, 1955, these are the changes that occured in net operating revenues in Riss & Company, and in the six companies that he says are

20,783 comparable.

And the only one which is really much above him, as you see, is Denver-Chicago, the only trucking company at that time in the United States that had a route from the East Coast to the West Coast.

So that if any of them was comparable, that one was not comparable.

Now, there were two indexes that Mr. Riss used:

He used the net operating revenue off his books, and he used the net income before income taxes off his books.

So I did the same thing with that net income before taxes.

(A chart was placed on easel.)

Now, taking again Mr. Riss' assumptions that these companies are comparable, and starting it all at the period before the rate reduction, which is our first act that could have affected him, look what happened to him:

From 1955 to 1957, net income before income taxes, he is up $4,411,000.00.

Nobody else went up -- three of the others went up -- no, four of the others went up, two of them went down, but none of them went up nearly as much.

* * *

20,803 Now, the final thing that I wanted to talk about is on the base year system on Meyers:

Do you want to put that up there?

(A chart was placed on easel.)

20,804 You remember Mr. Meyers took as his base year '49-'50.

That chart doesn't say "'49-'50," but I am coming to that.

Mr. Meyers took '49-'50.

Now, from a statistical standpoint, using two years is usually better than one year, because in any event you can iron out some of the matter.

But the one he chose, '49-'50 -- '50 was an abnormal year economically in the trucking business, and particularly in the explosives business, because in the middle of 1950 North Korea invaded South Korea and the United States said, "We will defend South Korea," and ammunition and explosives started flowing from all the arsenals as fast as they could, across the United States, for shipment across the Pacific to Korea.

Now, that's trucking business, and that is abnormal.

So we said, "Mr. Meyers, do something more for us. Let's take the two peacetime years in that same range of period you are talking about."

Remember, that's the whole period. I'm still talking on his figures.

20,805 I will not take you down on that chart partly because I don't understand it.

At the bottom, however, you will see, that the constructive net

income before taxes of Riss & Company, using Mr. Meyers' method, whatever it may have been, is $5,600.00.

And using the multiplication factor that he used, you get a constructive value of Riss & Company of $30,000.00.

Now, use the same factors that he did, he said that it had a minus value, I think of $40,000.00, or $45,000.00. Let's say $45,000,00, it comes out even.

Well, the difference between 30 and minus 45 is $75,000.00.

So if you used two peacetime years instead of one peacetime and one war year and you used Meyers' own method, you come out with a maximum difference off the average for all the values of $75,000.00.

* * *

REBUTTAL ARGUMENT OF PLAINTIFF

BY MR. WRIGHT:

* * *

* * *

20,933 I must say that that was done for two purposes: Not only to show you that these were one-way movements, but also so that you could see the fairly sporadic nature of the movements, that even where Riss would move five and ten million pounds a year the movements might be concentrated in two or three months of the year. One of those points -- I think it is Edgewood, Maryland, from McAlester, Oklahoma, that I had tabbed for you there, had no shipments by Riss moving in either direction. In that case there were movements from each of the points but not between the two points in question and I will confess that that particular pair of points did not offer much of a target to shoot at. But the other 26, if you will look at them, all had substantial movements during the time before this critical period hit.

You may be sure those were identified and offered here away back last winter or spring. That when they got those points from us, every one of these railroads took a look at what its own figures showed, as to what and when they moved explosives between those particular pairs of points. Of course, if that evidence had shown that they did not get a large

part of what we lost, they would have given it to you, of course, in evidentiary form from the witness stand. There were only 26 pairs of points.

20,934 You only had a short period of time to cover: 54-57. If you wanted to see what was moving before, during and after the cuts, and yet not one of them offered you any evidence by which you could compare actual shipments that the railroads made with the evidence we gave you as to what Riss & Company made.

The most you got from any railroads was from two relatively unimportant railroads, the "Katy" and the Missouri-Pacific. There they did go so far as to give you some tonnages that actually moved out of a couple of points that Riss served during part of this critical period.

But even those two railroads which gave you more than anybody else did, did not give you any figures that you can compare with what the plaintiff gave you, because they did not show you what tonnage moved at any time on any route between any pair of points.

* * *

20,938 MR. WRIGHT: I think it was perfectly clear that at the time the jury was told about your Honor's ruling -- if there is any doubt, I think you should tell them again that the ruling was not a ruling that these defendants have no obligation to produce at trial whatever the plaintiff's evidence might impel them to produce. That all you were ruling was that they did not have to give us this voluminous data.

THE COURT: Was this this motion for discovery matter that I sustained the objection that was made by all of the defendants, or some of the railroad defendants, that it would be too burdensome and they did not have to produce?

MR. WHEELER: Yes, sir.

THE COURT: Well, all right. This is contained in the Opinion I wrote which is cited in 23 Federal Rules Decisions, Page 213.

I said in that case:

20,939 "Clearly an interrogated party must furnish relevant

information in his possession which can be obtained without great labor or expense. Interrogatories under Rule 33, however, can not be construed so as to displace entirely the right or necessity of a party to obtain information and complete data at his own expense by discovery process through the inspection of books or documents under Rule 34.

"The underlying rationale of these decisions seems to be that burdensome research is properly considered beyond the scope of Rule 33.

"It is the Court's conclusion that interrogatories under Rule 33 were never intended to compel an adversary to search and analyze more than five million documents in order to furnish the answers. Therefore, plaintiff's objections to interrogatories 1-A-E-23 (a) - (f) in their present form must be sustained."

This was the original case of Riss against the Association of American Railroads in which I sustained an objection by the plaintiff. So to speak, I gave you the same treatment except I did not write any opinion when you made
20,940 it.

MR. WHEELER: That is correct.

THE COURT: But I did not rule in that case that if you wanted to produce it, you could not produce it. I ruled in effect it would be too burdensome and you did not have to produce it. That was the effect of the ruling. I did not rule that, if you saw fit to produce it and if it were not too burdensome for you--in other words, I did not rule on the materiality of it.

MR. WRIGHT: I understand that. What I think the jury is entitled to be told by your Honor--

THE COURT: I will read them the part of the opinion I read to you. Will you make the point and I will explain it to them--that I did not rule on the materiality of that evidence?

You may make the point in front of the jury.

(The jury resumed their places in the courtroom at 11 a. m.)

THE COURT: All right, Mr. Wheeler. I will recognize you. Now, you want to make some objection to part of the argument made by Mr. Wright.

20,941 MR. WHEELER: Yes, sir. I wanted to object to that part of his argument in which he asked the jury to infer that there was some withholding of information by Mr. Whitlow and the C & O which was not accounted for in this trial.

I object to that, your Honor, because, as I am sure you are aware, you ruled that we did not have to produce the statistics and the data concerning the shipments of ammunition and explosives. That is either the C & O or the other railroad defendants in this case.

You will recall that when Mr. Whitlow was on the stand Mr. Wright sought to go into this very question with him. I objected and your Honor sustained the objection on the basis of your previous ruling.

THE COURT: I will explain this matter to the jury.

Prior to trial, both sides, we will say, filed numerous motions -- what we call motions for discovery purposes, where they propound certain questions to the other side asking for certain information that the other side might have.

Now, Mr. Wheeler is correct in his point that several railroad defendants, among whom were his railroad, and there were exactly 1, 2, 3, 4, 5--I have 20 railroad defendants--who objected to certain interrogatories

20,942 filed by the Plaintiff in which the Plaintiff requested the defendant railroads to furnish the information that Mr. Wright had been talking about.

Now, the Court heard argument on that motion before you ever were selected as jurors. I signed an order and I ruled in favor of the railroads, and the order, the first paragraph reads as follows, which I filed on October 6, 1959, regarding those 20 railroads. I have only the numbers here, so I do not recall all their names. Anyway, most of the railroad defendants.

I said:

> Defendant so-and-so--"having filed objections to one

or more of the following identified interrogatories served by plaintiff on June 26, 1959"--now that is when the plaintiff served these interrogatories to get from these railroads this information that Mr. Wright is talking about--"interrogatories A-1-4, inclusive, B-1-4 Inclusive, D-5 (b), D-6 and E-4: The Court having heard oral argument on the said objections and having fully considered the aforesaid objections and arguments and its prior decision here-in reported at 23 Federal Rules
20,943 Decision 211, it is by the Court this 5th day of October, 1959, ordered: That Defendants' objections to interrogatories A-1-4 and B-1 and 2 served by plaintiff on June 26, 1959, be and they are hereby sustained."

In order for you to understand this matter, the Court will read briefly from an opinion which has been published in the publication known as the Federal Rules Decision. In that opinion I had occasion, not in connection with this case, but in connection with a motion for discovery by the plaintiff, to make a ruling on this matter.

This is what I said, the pertinent part, at least. This is found at 23 Federal Rules Decisions, page 213. There the Court used this language, quoting from other cases, of course.

"Clearly an interrogated party must furnish relevant information in his possession which can be obtained without great labor or expense.

"Interrogatories under Rule 33 of the Federal Rules of Civil Procedure, however, can not be construed so as to displace entirely the right or necessity of a party to obtain
20,944 information and compile data at its own expense by discovery process through the inspection of books or documents under Rule 34."

Now, this is the reason:

"The underlying rationale of these decisions seems

to be that burdensome research is properly considered beyond the scope of Rule 33.

"It is the Court's conclusion that interrogatories under Rule 33 were never intended to compel an adversary to search and analyze more than five million documents in order to furnish the answers.

"Therefore, Plaintiff's objections to interrogatories 1-A-E23 (a) - (f) in their present form must be sustained."

In other words, the plaintiff at one time objected to furnishing some information that they apparently would have to analyze and inspect about five million documents to supply, and when the defendants came in and did the same thing, the Court followed its ruling in connection with the decision it wrote in connection with the Plaintiff's request.

20,945 "The Court did not rule, however, on the materiality of that evidence."

In other words, the Court did not rule that the defendants in this case, the railroad defendants who objected to furnishing this information, could not furnish it. We never got to that point. All I ruled was that on objection, it was too burdensome and they did not have to furnish it.

* * *

20,989 Some of the defendants in this case are associations -- associations of railroads or of their officers or employees. Such associations are perfectly lawful. Moreover, there is absolutely nothing unlawful in and of itself in any of the railroad defendants being members of one or many associations, or participating in their committees, their meetings or their other activities.

The individual members of the association can be held responsible for the unlawful conspiratorial acts or declarations of the associations only if they are shown to have known and approved of such activities and their
20,990 unlawful objective, either expressly or impliedly, and of course, I do not suggest that the association did or did not engage in unlawful con-

spiratorial acts or declarations.

Evidence of participation by some members of an association in an illegal conspiracy is not sufficient to establish participation by the Association or other members of the Association in the conspiracy. The Association is not liable for the acts of its members unless the Association, as such, has directed or authorized the acts complained of or ratified them, either expressly or impliedly.

* * *

20,994 As I told you on a prior occasion, the term "monopolize" as used in the Sherman Act, means the joint acquisition or maintenance by the membe of a conspiracy, formed for that purpose, of the power to control and dominate trade and commerce in a commodity or commodities, or in a business to such an extent that they are able, as a group, to exclude actual or potent-
20,995 ial competitors from the field accompanied by the intention and the purpose to exercise such power. Since the transportation of government ammunition and explosives has not been monopolized, plaintiff must prove that some or all of the defendants attempted to monopolize that business pursuant to a conspiracy to monopolize the business. The phrase "attempt to monopolize, means the employment of methods, means and practices, which, if successful, accomplish monopolization and which, though falling short, nevertheless approach so close as to create a dangerous probability of it, which means and methods are so employed by the members of, and pursuant to, a combination or conspiracy formed for the purpose of such accomplishment.

This offense of an attempt to monopolize requires proof that the parties to the alleged conspiracy had an actual, specific intent to obtain for themselves a monopoly of the relevant market by means of the overt acts engaged in by them pursuant to the alleged conspiracy.

Section One of the Act does not forbid all restraints of trade, but only combinations and conspiracies which unreasonably restrain trade. You see, all business action affects trade in some way. The law tries to
20,996 keep the competitive process natural and reasonable. Let me

give you an example. When a person goes out of business because he is incompetent; that is, he just isn't a good businessman, competition is lessened naturally and obviously, since, of course, there is one less business in the field of competition. But no one is held responsible for that man's business failure. It was the result of the competitive process. But when you combine and conspire to drive a competitor out of a business, and commit acts to effect that result, that is another thing. The result is the same in both cases, that is, there is one less business in the field. But in the latter case the restraint of trade, especially when part of a larger scheme to monopolize, violates the Sherman Act.

So, therefore, you see that there are three offenses charged by the plaintiff:

One, that the railroads tried to eliminate Riss as an explosives trucker in unreasonable restraint of trade, as one of their principal competitors in that field, and as part of their plan to monopolize the ammunition business for the government;

Two, that the defendants conspired to monopolize this trade for themselves; and

20,997 Three, that they then attempted to monopolize this business.

* * *

21,001 Further, an unlawful conspiracy may be formed with out simultaneous action or agreement on the part of the conspirators. It is enough that knowing that concerted action was contemplated, the conspirators gave their adherence to the scheme and participated in it. Before a conspiracy can be said to have been proved by circumstantial evidence alone, it is necessary not only that the circumstances proved by the evidence shall reasonably give rise to an inference of such conspiracy, but also that no other equally reasonable inference can be drawn from the same circumstances. If two equally reasonable inferences can be drawn from circumstances proved by the evidence, one consistent with the existence of the conspiracy sought to be proved and the other inconsistent therewith, you should not

infer the existence of the conspiracy from such circumstances alone.

21, 002 Plaintiff's claim must be judged separately as to each defendant, and the position of each defendant must be judged on its own merits. Each defendant, therefore, is entitled to individual consideration of the particular evidence applicable to it to determine whether that particular defendant participated in any conspiracy. You cannot return a verdict against any defendant unless you find specifically that that defendant conspired with one or more of the other defendants to unreasonably restrain trade by eliminating Riss from the explosives business, or to monopolize explosives and ammunition traffic, or attempt to monopolize such traffic.

If you should determine that there was such a conspiracy to unreasonably restrain trade or to monopolize the business of hauling explosives and ammunition for the government, or an attempt to monopolize, then in order for you to find that any individual defendant participated in that conspiracy, it must be shown that said defendant had "knowledge of the existence of that conspiracy" and that it knowingly performed an act designed to promote or aid in the attainment of the object of that known conspiracy.

21, 003 In order to find that a defendant had knowledge of the conspiracy, if any, the evidence of knowledge must be clear and not equivocal.

I instruct you that you may not find that any individual defendant participated in the alleged conspiracy by performing an act in furtherance of and with knowledge of the conspiracy unless you find that it had such knowledge and took such action prior to September 22, 1954.

* * *

21, 006 THE COURT: I just learned that I inadvertently used in part of my charge the word "may" instead of the word "need"; n - e - e - d. So I will read over that part of the charge.

> "As I have mentioned before, you can not return a verdict against a particular defendant unless you find that that defendant knew of the conspiracy and participated in it.
>
> "However, this knowledge may be inferred from all the

evidence and need not be proven by direct evidence. This knowledge issue is, of course, for you the jury to decide."

Now, what is this case all about? What is the basic issue here? The plaintiff has charged that the defendant combined to monopolize the business of transporting ammunition and explosives for the United States Government. Plaintiff claims that its explosives trucking business was a special target of the defendants' alleged campaign because plaintiff was an important trucker of ammunition and explosives for the United States Government and alleges that the Defendants would have to eliminate the plaintiff's competition for that traffic in order to monopolize that traffic. Each defendant denies these allegations of the Plaintiff.

21, 007 Plaintiff concedes that the Defendants used means, which, if considered by themselves, were entirely lawful. That is, the Plaintiff is charging that type of conspiracy which I told you consisted of an agreement by two or more persons to accomplish an unlawful objective by lawful means. It is Plaintiff's contention that this unlawful objective was the obtaining for the railroads as a whole, at least 90 per cent of the Government ammunition traffic, without regard to the merits of any particular railroad or group of railroads, as competitors for such traffic.

* * *

21, 013 Public relations activities, as I have told you during the trial, in and of themselves, are not unlawful but they cannot be used to violate the anti-trust laws and I do not suggest that they were or were not so used. That, again, is for you, the jury, to decide from all the evidence. It has never been deemed an abridgement of speech or press to make a course of conduct illegal merely because the conduct was in fact initiated, evidenced or carried out by means of language either spoken, written or printed. Such an expansive interpretation of the constitutional guarantees of speech and press would make it practically impossible to enforce laws against agreements in restraint of trade.

Further you are instructed that sponsoring legislation, in and of

itself, is not unlawful. Therefore, if you find that the Defendants or any of them engaged in an effort to obtain the enactment of any 5,000 pound bills which were introduced in various state legislatures, such action was not in itself un-
21,014 lawful. However, if done pursuant to a pre-existing conspiracy to drive a competitor out of the explosives business, or to monopolize or to attempt to monopolize such business, such activities, in view of the over-all plan, if there was such a plan, would violate the antitrust laws. These issues are for you, the jury alone to decide.

* * *

21,022 Now, in summary then, the principal overt acts charged in the original complaint filed on September 22, 1954 were the alleged public relations campaign, the alleged sponsoring of restrictive legislation and the alleged abuse of the right of intervention before the Interstate Commerce
21,023 Commission. This phrase "overt acts" means acts done to effect the object of the conspiracy. In other words, before the offense of conspiracy is completed, one or more of the parties must do some act to effect the object of the conspiracy. Such act is termed an overt act. An overt act as effecting the object of a conspiracy must be one independent of the conspiracy and agreement. It must not be one of a series of acts constituting the agreement or conspiring together, but it must be a subsequent, independent act following the complete agreement on conspiracy and done to carry into effect the object of the original combination.

Now, the first issue you have to determine is whether or not there was in existence prior to the filing of the Plaintiff's complaint on September 22, 1954, the conspiracy alleged in that complaint as I have summarized it for you. If you determine that there was no such conspiracy, then you will return a verdict for the Defendants. If you determine that there was such a conspiracy, and I do not suggest that there was or was not, then, for your second step, you may consider whether or not the overt acts which are the subject of the supplemental complaint filed on January 31, 1958 were or were not acts taken pursuant to that conspiracy.

* * *

21,025 Now, with regard to this charge of the Plaintiff that the rate reductions were overt acts taken pursuant to a pre-existing conspiracy, defendants claim that such rates were adopted in conformity with formal agreements approved by the Interstate Commerce Commission; that these rates were in fact a series of joint rates which were not uniform and that such rate quotations to the Department of Defense were in fact submitted at the express request of the Defense Department which allegedly asked the railroad defendants for a substantial reduction in the joint rates for the transporting of explosives; that the Defense Department encouraged and, in fact, required such joint action by the railroad carriers in quoting rates for the transporting of explosives and, finally, that these rate changes were based on sound business judgments then prevailing in the transportation industry, including the competitive conditions prevailing at the time and that these rate changes were reasonable responses to circumstances in the transportation industry, including factors of competition. These issues, of course, are for you the jury to resolve.

Now, Section 5A of the Interstate Commerce Act authorized railroads to agree on rates to be charged by the railroads and to employ for this
21,026 purpose rate bureaus such as the Traffic Executives Association, the Southern Freight Association and the Western Traffic Association.

You are instructed that all railroad rates here in question were made pursuant to the procedures specified in the various railroad rate agreements which have been approved by the Interstate Commerce Commission. You should understand, in considering whether or not these rate reductions were made pursuant to the pre-existing conspiracy, that the Plaintiff does not contend that these rate reductions were illegal in and of themselves. You may assume that these rate reductions, like the alleged overt acts which occurred prior to the complaint, are all perfectly legal acts when viewed apart from the alleged conspiracy. As in the case of the other alleged overt acts, the important issue for you to determine is what was the purpose of the rate reductions. If you find that these rate reductions were

part of an effort by the Defendants in combination or conspiracy to eliminate the competition of the Plaintiff in transporting ammunition and explosives for the United States Government, rather than used merely to meet that competition, they would be removed from the protection of Section 5A of the Interstate Commerce Act.

* * *

21, 027 Plaintiff has the burden of proof in this regard and has no right to damages from any rate reduction of which the Plaintiff complains unless its proof has convinced you by a fair preponderance of the evidence on each of the three following points:

1. Prior to the October, 1955 rate reduction, two or more of the Defendants must have been engaged in the alleged pre-existing conspiracy which contemplated, if necessary, the use of rate reductions.

21, 028 2. The rate reductions must have been determined upon and employed by those defendants not for the purpose of meeting truck competition, but pursuant to that conspiracy for the specific and deliberate purpose of eliminating that competition.

3. The rate reductions must have damaged Plaintiff and the evidence must provide you with a reasonable basis for estimating the amount of this damage.

If you are not convinced by a fair preponderance of the evidence on any one of these points, you should ignore all evidence with respect to rate reductions in this case.

* * *

21, 032 Now, whether or not these rates were reasonable or unreasonable, or discriminatory or non-discriminatory, under the standards of the Interstate Commerce Act, is not here for determination by you. You may assume, therefore, for purposes of this case, that each of these rates was in and of itself a lawful rate.

You may also assume, as I have previously mentioned, that the procedure by which these rates were quoted was perfectly lawful rate-

making procedure. Remember that the rate issue that you must determine is whether or not, regardless of the lawful means by which the rate reductions were accomplished and the lawfulness of the rates standing by themselves, the reduction was in fact made for the purpose of eliminating the competition of Plaintiff or all truckers or were to meet that competition. If the purpose of the reductions was in fact to carry out a pre-existing conspiracy to monopolize the transportation of ammunition and explosives for the United States Government, then the defendants are liable for the resulting damages, if any, to the Plaintiff, regardless of the legality of the reductions
21,033 viewed apart from the conspiracy.

* * *

21,038 Now, remember that you have to find two things in regard to this question of damages, if you find that the conspiracy alleged did in fact take place. First, you must find that the rate reductions of the defendants were the cause of plaintiff's losses, if any, and, second, you must determine the amount of those losses, if any. In other words, before you start calculating what the amount is, you must first find that the plaintiff was injured as a result of the rate reductions. Now, in this regard, the plaintiff contends that the alleged conspiracy of the defendants and the rate reductions allegedly
21,039 pursuant to it, were what caused its losses, if any. Defendants, on the contrary, have introduced evidence which they claim shows that many other causes or events caused the injury, if any, and not any action that they allegedly took against the plaintiff. Plaintiff has denied that these events or causes were what made its business decline, if it did decline. You will recall the great amount of evidence introduced on this subject of damages and its alleged causes. I will not undertake to review it for you at this time. However, these issues on what caused the damages, if any, to the plaintiff are for you the jury to decide, and you may consider all of the factors and all the evidence relating to it. The plaintiff, however, must show in this connection that the defendants' alleged unlawful acts were either a cause of a specific fraction of its losses, or a more substantial cause of its losses than was any other known factor or factors. You may

not render a verdict based on speculation or guesswork, but on the other hand you may act on the probable or inferential, as well as on direct and positive proof.

There is no proof that plaintiff lost any business, either in general commodities or ammunition and explosives by reason of publicity published or circulated by defendants. Accordingly, in determining the amount
21,040 of plaintiff's damages, you must consider only the losses plaintiff experienced in the period October 17, 1955 - January 31, 1958; that is, following the general rate reductions.

Further, plaintiff cannot recover in this action for any damages incurred after January 31, 1958, when its supplemental complaint was filed, even if such damages were caused by the alleged conspiracy. Further, if you find that plaintiff has suffered any damage by reason of the action or inaction of the ICC or other regulatory agencies, the enactment or failure of enactment of any statutes, ordinances or regulations or the enforcement or lack of enforcement of any statutes, ordinances or regulations, such damages are the result of governmental acts of the States or Federal Government and may not be made the basis for any recovery in this action.

* * *

21,043 In any event, if you find for the plaintiff, your verdict will be a verdict for a single lump sum against all of the defendants you find liable for the alleged conspiracy; and you will not undertake to apportion the plaintiff's damages against such defendants.

* * *

COLLOQUY BETWEEN COURT AND COUNSEL

* * *

21,065 THE COURT: I was going to take that up in a couple of minutes.

Now, I may have a situation develop and we probably will in a long case like this, where the jury might want to hear or have the court re-read a portion of the charge again. There ought to be somebody available to the various plaintiffs or defendants. I will first get in touch with the lawyer

and let you know. But I do not think we ought to have to wait for an hour until everyone gets down here, because we will lose time. If you can have one person present to protect your interest, then we can go ahead.

MR. SHEA: You mean someone present here all of the time, one person?

THE COURT: I would think so. It may not be necessary for maybe half a day or so, but it may be necessary in the afternoon.

21,066 MR. WRIGHT: I was just wondering: Mr. Layne suggested perhaps that problem might be obviated if you simply gave a copy--

MR. SHEA: That will be acceptable to us.

THE COURT: Will it be acceptable to give a copy to the jury?

MR. SHEA: Yes, that will be all right.

THE COURT: All right.

Will it be necessary to call the jury back? Get my copy, will you, the copy that I used yesterday.

MR. AILES: Your copy does not have the citations in it.

THE COURT: No, sir, that is the reason I mentioned it. In fact, I had it in large type so I would not have to use glasses. I never feel comfortable with glasses on. I have to use them sometimes, though.

MR. SHEA: Now, do you want someone here all of the time? You can get us in fifteen or twenty minutes.

THE COURT: No, we can get you in five or ten minutes. We have the exhibit problem worked out. All you have to do is tell the Marshal and the clerk.

Keep this door always shut, will you, Mr. Marshal, when they are in here? Of course, you will be outside when they are in here--I hope.

21,067 All right, Well, the last sheet here where I informed counsel that all objections would be preserved and so forth, I have written in, in longhand, the last sentence reads as follows:

> "Does any party request any further instructions rather than those given by the Court?"

This is what I wrote in myself, "Than those already made a matter of record."

Then I said, adjourn, admonish the jury, excuse jury, including alternates, until 10 a.m. Thursday.

I can erase that off.

MR. SHEA: Why don't you do that, your Honor?

THE COURT: Yes, I can erase that.

MR. McGLOTHLIN: A way of getting this to the attention of the jury is to have the Marshal advise them in the courtroom by agreement of the counsel, here is a copy of the charge.

THE COURT: Mr. Marshal, will you tell the jury by agreement among counsel, all of the counsel agreed, and the Court that they can have a copy of the charge that I read from yesterday. During their deliberations they may have that.

* * *

21,068 Well, I want to again congratulate all of the lawyers. As I have told many people, in the many years that I have practiced law and since I have been on the bench, I have never seen a case that has been better prepared or as well prepared as this case. I know what all of you have gone through. I know of the many sleepless nights and the early hours you have gotten up in the morning. Believe me, my heart has gone out to you many, many times. I have noticed the tired look in your faces in the morning, the strain you have been under. I have been under a little strain, myself. I am glad it is practically over now. I have enjoyed working with all of you. We have had our tiffs from time to time but they were never personal, anything that I have said to any of you. I want you to know that from the bottom of my heart.

As I have said before, from the plaintiff's standpoint, he has presented the best possible case he could considering the evidence in the case. Both Mr. Wright and Mr. Layne are outstanding lawyers, and the other young men that work with them. It has been fortunate for me to have

had the opportunity to work with some of the leaders in the bar in this country, especially in this anti-trust field. I appreciate all the cooperation you have
21,069 given the Court.

* * *

OUT OF PRESENCE OF JURY

21,114 THE COURT: I will read you a note I received from the foreman of the jury.

"We have a hypothetical question. If the jury should agree there was a conspiracy and voted for the Plaintiff but agreed the Plaintiff was entitled to no monetary damages, would this be an acceptable verdict to the Court? Signed Ethan Walter."

Now, my offhand feeling is this: I have instructed the jury on what I think the law is in the case. They have a form of verdict for them, and I prepared a little statement that I intended to read to the jury, unless you gentlemen can convince me that I am in error on this, which I think should answer the problem.

My statement is this: I have given this considerable thought, and this is what I expect to tell the jury. I will listen to some discussion on it.

"Ladies and gentlemen of the jury, the Court has given careful consideration to the note forwarded to it by the foreman. The Court feels that you have been fully and correctly charged with respect to the law applicable to the case, and you have available the form of the verdict.

"Therefore, the Court will not answer any hypothetical question, and you will have to be governed by the law applicable to the case and the facts."

21,115 I will hear any discussion.

MR. BALL: May I state my position without having consulted the jury?

THE COURT: Incidentally, I hope you gentlemen don't let this go beyond this room. I am going to have to call the jury into the courtroom.

MR. BALL: It is my position that the verdict which said, "We find for the Plaintiff," and then on the second part, "None," when it comes to damages would be a proper verdict because it would be clear decision in the light of the instructions that the Court has given that this jury finds for the Plaintiff but has found no proof of damages upon which to base an award.

Then I think it would be immediately possible for the Court upon that to enter a verdict for six cents as nominal to conform with the law, and for

that reason it seems to me that the answer to the hypothetical question should be that such a verdict would be legally acceptable.

Now that's the position that I wanted to state, and I haven't had a chance to consult.

SENATOR WHEELER: I think that what Mr. Ball has said would be correct, and it seems to me that the Court could very properly say that under the instructions, that that would be a legal answer to the case.

21,116 THE COURT: Let me hear from Mr. McKay.

MR. McKAY: I suppose, your Honor, if they find no damages it would be the verdict for all the Defendants. I would suppose that is what the law would be, and I should suppose the response is that if you find there are no damages, then your verdict should be for all.

THE COURT: I have said that in effect in the charge there.

MR. McKAY: Yes, but why can't you say, I would suppose you to say that if you find there is no damages then, I have already charged you that this means the verdict for all Defendants in referring to the point in your charge.

THE COURT: This may be just one Juror having some idea. You never know what this means to the Court, but I think this jury is intelligent enough to read that charge and say: All right, we will find three things. Let's find a conspiracy; let's find a causal connection between the conspiracy and any damages sustained by the Plaintiff. Then you must go further and find the amount of the damages so they have three things to decide, and I have told them several times during the trial.

MR. McKAY: There is no question of your instructions. Your instructions are perfectly clear, but apparently they aren't following.

21,117 I would suppose that the -- I would suggest to it an appropriate course, you are saying: I have instructed you to find no damages, but then the dicta should be for the defendant.

THE COURT: Let me hear from Mr. Wright.

What is your position?

MR. WRIGHT: The question wouldn't be answered at all. It would only be answered correctly by a flat unequivocal no. I agree with Your Honor that this course is not an attempt to answer hypothetical questions because you might invite a whole series.

THE COURT: That's right.

MR. McKAY: What is suggested is probably the best way to handle it.

MR. McGLOTHLIN: I think certainly, gentlemen, the law is your -- as your charge states is correct that damages cannot be found. At least a private citzen hasn't a remedy. I think your chart so states; of course, I do recognize that there is one of them which says it is possible to give nominal damages, six cents damages. That case would go to waste. There are certain cases which would support it.

21,118 Maybe six cents I should say. I think there are cases that will support also the decision that if such a verdict came in, Your Honor would be bound to interpret it as the verdict of the Defendant.

So it seems to me that whatever you say you would have to say -- it seems to me that this is such a verdict. You have to make up your own minds as to whether it is a verdict which you would interpret as being the verdict which would be the nominal damages. Whichever way you come out on that it seems to me that any reply you give should make specific reference to the charge, in effect advise them to read the charge over again. As I heard your Honor's instructions, it didn't seem to me to be related quite as directly to the charge as I think it ought to be because after all the charge is the ground rules under which they are operating.

COLONEL RHOADS: Primarily implementation of Mr. McGlothlin's statement, it seems to me in view of the length of the charge, it might be appropriate and helpful to the jury if you not only indicated the charge, but indicate the general area in the charge in which your instructions would be pertinent to this inquiry of theirs are directed -- maybe Page 2 or what have you, I have forgotten myself, but it seems to me it would be helpful to them.

21,119 THE COURT: I think they have given this thing a lot of thought. I think I will do what I have indicated I thought I should do when I first came in.

I will just tell them apply to all the facts of the case, I am not going to answer. If they can't read it between the lines on that. They have -- they can just read the charge. They have undoubtedly read the material several times by now. And with all the instructions we have been given all during the trial, obviously just like Mr. Shea said, If they find a conspiracy say against two or more or all of the Defendants, and they find absolutely no damages, then it is necessarily or logically following they must file for the Defendants. That is just as plain as you can make it.

That is the purpose of the whole thing to be acted on.

MR. McKAY: I think your charge clearly says that. I would just feel it would help them along by just saying: My charge tells you that if you can't find any damages, then your verdict is --

THE COURT: Senator?

SENATOR WHEELER: I think what you are saying is appropriate. On the other hand, I think it could be said that such a verdict under the instructions will be a proper verdict.

21,120 THE COURT: Now if they did come in and said to the Plaintiff against say ten Defendants, and they say no damages, the Court would have to send them back out and say, I cannot accept this verdict because they have got to find either two cents or ten dollars.

MR. BALL: I don't agree with that.

MR. McKAY: Wouldn't it therefore be appropriate for Your Honor not necessarily answering the specific hypothetical question, but simply to repeat what you said a few moments ago about the three elements which is obviously the direction to it, and it seems to me that would be helpful to the jury in the posture that you are now in.

SENATOR WHEELER: In other words, you can find the Defendant guilty of negligence, but no damages. And that has been --

MR. McKAY: Your Honor, let me ask this, if I may: Why couldn't you say, Now I have fully covered this in my chart but if you want to know what the form of your verdict should be in the event you find no damage, the form of your verdict should be a verdict for all Defendants?

THE COURT: I am trying to find that part. We are talking about damages.

MR. McKAY: It starts at Page 40, I think, Your Honor.

21,121 THE COURT: Here it is.

Well, there is one part in it my charge where I said, You have to find three things in this case. It bears on the causal connection. That is the part. Would you try to find it (hands document to Law Clerk)?

THE COURT: I have this typed up especially for the charge so it wouldn't have the citation. There is one place I summarized it.

MR. WHEELER: There. That is the only thing I have. It is difficult for a non-lawyer to wade through it and find the pertinent part.

THE COURT: I am going to hear from the Plaintiffs.

MR. AILES: If you want to know what the Plaintiff's position is on this, I repeat it is either a flat unequivocal no answer or what you have just when you first came in rather than some attempt to single out, answer the question by singling out several parts of the charge. I think that would be prejudicial error.

THE COURT: I have given this a lot of thought, and I think I am right on doing it. I am going to make this statement so there won't be any possible error, and then if they come back later, that's the thing.

21,122 I am going to read them the statement I prepared and let it go at that, and then they will go back and read their charge, I hope. That is on Page 56.

That is where I said: I will now instruct you with respect to damage and the standard which the Plaintiff would meet to sustain the burden of proof that it has been damaged.

You are not to assume the fact that I instruct you on damages that I hold the view that the Plaintiff has or has not proved that any of the Defendants engaged in any conspiracy or that any of them engaged in any acts further of such conspiracy, or that the Plaintiff has or has not been damaged. These matters, of course, are for you, the jury, to decide.

Plaintiff has the burden of proving the existence of causal relationship between Defendants' alleged misconduct and some injury to the Plaintiff, that is

it must prove by a fair preponderance of the evidence that its business or property has in fact been damaged as a direct result of a conspiracy as previously defined among two or more of the Defendants.

Proof of this necessary causal relationship requires something more than proof that one or more of the Defendants has something at or about the same time that the Plaintiff's business declined. The Plaintiff must show by
21,123 positive proof that it suffered damages as a result of an unlawful conspiracy.

Further, if you find that the Plaintiff is entitled to recovery, you are not to allow as damages any loss of profits resulting from activities which you find to be illegal or any dimunition and net worth resulting from profits which you find were caused -- I haven't got my glasses on -- what is that word -- earned through any illegal activity.

Anyway, this is very simple. The jury can read this again.

Well, I think monetary damages will mean monetary damages.

MR. BALL: That is speculating.

THE COURT: I think they know they are fighting for money.

All right, I am going to read them this statement, gentlemen, and we will bring them in at 1:45. Bring them in to this courtroom. Into the ceremonial courtroom at 1:45.

(At 1:25 p.m. the proceeding recessed.)

21,124 (The following occurred in the presence of the jury, in the ceremonial courtroom:)

DEPUTY MARSHAL: This Honorable Court is now in session.

TO THE JURY BY THE COURT

THE COURT: Ladies and gentlemen of the jury, the Court received the note from the foreman which reads as follows:

"Judge Sirica, we have a hypothetical question.

"If the jury should agree there was a conspiracy and voted for the Plaintiff but agreed the Plaintiff was entitled to no monetary damages, would this be an acceptable verdict to the Court? Signed Ethan Walter."

Ladies and gentlemen of the jury, the Court has given careful consideration to the note forwarded to it by your foreman. The Court feels that you have been fully and clearly charged with respect to the law applicable to this case, and you have available the charge and the form of the verdict.

Therefore, the Court will not answer any hypothetical question, and you will have to be governed by the law applicable to the case and the facts.

I will ask the jury to continue their deliberation.

* * *

21,126 OUT OF PRESENCE OF JURY

THE COURT: This note states as follows:

"Mr. Sirica, after nine days of deliberation the members of the jury have not been able to come to a unanimous verdict. (Signed) Ethan Walther."

This is the charge I am going to read to the jury from the Allen case. Of course, the first part of it is not from the Allen case, but the substance of it is.

I think Mr. Ball read this the other day. I have only added one sentenc

"Ladies and gentlemen of the jury, this instruction has been approved by the Supreme Court of the United States:

"You should endeavor to reach a verdict in this case if it is at all possible. It seems to me you ought to make every effort to arrive at a unanimous verdict and to reach a conclusion, if possible. Of course, the verdict of the jury should reflect the opinion of each individual juror, but it by no means follows that opinions may not be changed by conferences in the jury room. The very object of the jury system is to secure a unanimity by comparison of views, and by agree-

21,127 ments among the jurors themselves. Each juror should listen with deference to the arguments of the other jurors, with a distrust of his own judgment, if he finds the large majority of the jury takes a different view of the case from what he, himself, takes.

"No juror should go to the jury room with a blind determination that the verdict should represent his opinion of the case at that moment,

or that he should close his ears to the argument of other jurors who are equally as honest and intelligent as himself.

"Accordingly, although the verdict must be the verdict of each individual juror and not a mere acquiescence in the conclusion of your fellow jurors, the Court instructs you, however, that you should examine the issues submitted with an open mind, and with a candor and with proper regard and deference to the opinions of each other.

"It is your duty to decide this case if you can conscientiously do so. You should listen to each other's arguments with a disposition to be convinced. If much the larger number of jurors favor one side or the other, a dissenting juror should consider whether, in the light of the opinions that are expressed by the other jurors, in the jury room, he is not in error as to his views.

21,128 "I want you to go back to the jury room and continue your deliberations. Discuss the matter among yourselves in a friendly spirit and endeavor to agree upon a verdict."

I am going to suggest that I think probably the jury ought to go to dinner first and let the Marshal know if they wish to deliberate after having dinner; that is, when they arrive in the jury room. So we can wait around and find out what they are going to do. That is the only thing I can do.

MR. WRIGHT: If the Court please, I would like to make a suggestion -- this one suggestion: I think there is a possibility, perhaps one chance in a thousand, but I think the chance should be eliminated in any event, that these jurors may have concluded that a unanimous -- when they say they can't reach a unanimous verdict that means they have not been able to reach a unanimous verdict as to all defendants.

To eliminate that I would not suggest any further instructions, but I do believe they might be asked a single question: "Have you been unable to agree as to the liability of any defendant?" That is, before the charge is given.

THE COURT: I think it is --

MR. WRIGHT: "Have you been unable to reach a verdict as to any defendant?

21,129 That is all I would suggest.

THE COURT: "Unable to reach a unanimous verdict."

MR. WRIGHT: Yes, as to any defendant.

MR. McGLOTHLIN: That troubles me. Because it certainly implies that they have made a stride forward if they find two defendants were in a conspiracy.

As far as I am concerned they have not made a stride forward. They have still got a number of questions to reach before they could reach the question of a verdict against any defendant.

SENATOR WHEELER: It might indicate that they might think that the Court felt they reached a unanimous agreement at that as to some of them.

THE COURT: Well, let me ask you this: Is there any objection to this:

"Have you been able to reach a unanimous verdict as to the plaintiff against two or more of the defendants?"

MR. BALL: Oh, no, no.

THE COURT: Here is what I am going to do. I am going to give the Allen Charge, like it is, just give it to them. Then, if they report in a day or so that they are hopelessly deadlocked, before I finally discharge them I am going to try to find out, I think we should, if they have been able to arrive at
21,130 any unanimous verdict in the case of the plaintiff against any of the defendants. Then we will finally determine that.

I think this jury is intelligent enough to know that, with all of the arguments that have been had in this case, that they have to decide each individual case. There are twenty-eight cases here.

MR. WHEELER: The verdict set that out, your Honor.

THE COURT: I have got that set up in the verdict, yes.

I will give them this instruction just as it is.

If there is objection, you may note it now.

* * *

VERDICT

21,146 DEPUTY CLERK: Mr. Foreman, Please rise.

Mr. Foreman, has the jury agreed upon a verdict?

THE FOREMAN: Yes, sir, it has.

DEPUTY CLERK: May I have it, please?

THE FOREMAN: Yes (handing document to the Deputy Clerk.)

DEPUTY CLERK: Mr. Foreman, will you please rise?

21,147 THE COURT: Just a moment. You may be seated for a second, Mr. Foreman.

Will counsel come to the Bench, please?

(At the Bench.)

THE COURT: The Foreman of the jury has stated a verdict which has found as follows:

For the Defendant Association of American Railroads.

For the Plaintiff against the Association of Western Railways.

For the Plaintiff against the Traffic Executive Association - Eastern Railroads.

For the Plaintiff against the Eastern Railroad Presidents Conference.

For the Plaintiff against Carl Byoir & Associates, Inc.

For the Defendant Atlantic Coast Line Railroad Company.

For Defendant as to Atchison, Topeka & Santa Fe Railway Company.

For Defendant as to B & O Railroad Company.

For Defendant as to C & O Railway Company.

For Defendant Chicago, Burlington & Quincy Railroad Company.

For Defendant as to Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

21,148 For Defendant Chicago and Northwestern Railway Company.

For Defendant Chicago, Rock Island & Pacific Railroad Company.

For Defendant Erie Railroad Company.

For Defendant Great Northern Railway Company.

For Defendant Illinois Central Railroad Company.

For Defendant Missouri-Kansas-Texas Railroad Company.

For Defendant Missouri Pacific Railroad Company.

For Defendant New York Central Railroad Company.

For Defendant Northern Pacific Railway Company.

For the Plaintiff against the Pennsylvania Railroad Company.

For the Defendant St. Louis - San Francisco Railway Company.

For Defendant as to Southern Pacific Company.

For Defendant as to Union Pacific Railroad Company.

For Defendant as to Wabash Railroad Company.

For Defendant as to Minneapolis, St. Paul & Sault Ste. Marie Railroad Company.

For Defendant as to Southern Railway Company.

For Defendant as to Seaboard Air Line Railroad Company.

21,149 In connection with the damages, the answers given to the question, "If your verdict is in favor of the Plaintiff against two or more of the Defendants, what is the total amount of your verdict, ?" is "None."

Now, can we take a verdict like that?

MR. McGLOTHLIN: I think we have to.

MR. GATES: I think you have to.

MR. WRIGHT: Your Honor --

THE COURT: I think you have to take that verdict.

MR. SHEA: That is clear.

MR. WRIGHT: It does not seem to me you have a verdict.

THE COURT: They find no damages but you have a verdict so far as the case is concerned against the various defendants.

MR. RHOADS: That is it.

THE COURT: As you understand, of course, under the Clayton Act, the Plaintiff is entitled to reasonable counsel fees and costs and whatever the reasonable costs are.

MR. WRIGHT: I doubt if that is so, without a damage award, your Honor.

THE COURT: Then I will just have to tell the jury they can make any award they wish --

21,150 MR. GATES: Oh, no. Wait a minute.

MR. SHEA: I think you have the verdict.

MR. McGLOTHLIN: A verdict is a verdict.

MR. GATES: This is the verdict.

MR. SHEA: You can't interpret it.

THE COURT: In other words, they find the allegations have been proven but find no damages.

MR. RHOADS: Against some.

MR. McGLOTHLIN: As to many of the defendants they are not proved.

THE COURT: Mr. Wright, the best that could probably be done -- they may say six cents or something like this.

MR. RHOADS: No, this is the verdict.

MR. GATES: Can't change the verdict now.

MR. McGLOTHLIN: You read that into the record. That is the record handed to the Court.

THE COURT: It is up to them to find the damages.

MR. McGLOTHLIN: And they found none.

MR. SHEA: I think it is clear.

THE COURT: All right, take the verdict.

(IN OPEN COURT)

DEPUTY CLERK: Mr. Foreman, will you please rise?

Mr. Foreman, what is your verdict as to the Plaintiff against the Association of American Railroads?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Association of Western Railways?

THE FOREMAN: For the Plaintiff.

DEPUTY CLERK: For the Plaintiff?

THE FOREMAN: Yes, sir.

DEPUTY CLERK: For the Plaintiff?

THE FOREMAN: Association of Western Railroads? For the Plaintiff, yes, sir.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Traffic Executives Association - Eastern Railroads?

THE FOREMAN: For the Plaintiff.

MR. McGLOTHLIN: Could I ask Mr. Walther to speak a little bit clearer.

THE FOREMAN: I am sorry. I am nervous.

THE COURT: I think we are all nervous.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Eastern Railroads Presidents' Conference?

THE FOREMAN: For the Plaintiff.

DEPUTY CLERK: What is your verdict as to the Plaintiff Carl Byoir & Associates, Inc.?

THE FOREMAN: For the Plaintiff.

21,152 DEPUTY CLERK: What is your verdict as to the Plaintiff against the Atlantic Coastline Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Atchison, Topeka & Santa Fe Railway Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Baltimore & Ohio Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Chesapeake & Ohio Railway Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Chicago, Burlington & Quincy Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Chicago, Milwaukee, St. Paul & Pacific Railroad Company?

THE FOREMAN: For the defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Chicago and Northwestern Railway Company?

21,153 THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Chicago, Rock Island and Pacific Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Erie Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Great Northern Railway Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Illinois Central Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Missouri-Kansas-Texas Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Missouri Pacific Railroad Company?

THE FOREMAN: For the Defendant.

21,154 DEPUTY CLERK: What is your verdict as to the Plaintiff against the New York Central Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Northern Pacific Railway Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Pennsylvania Railroad Company?

THE FOREMAN: For the Plaintiff.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the St. Louis, San Francisco Railway Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Southern Pacific Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plantiff against the Union Pacific Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Wabash Railroad Company?

THE FOREMAN: For the Defendant.

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Minneapolis, St. Paul & Sault Ste Marie Railroad Company?

21,155 THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Southern Railway Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is your verdict as to the Plaintiff against the Seaboard Air Line Railroad Company?

THE FOREMAN: For the Defendant.

THE COURT: Mr. Foreman, just a second. Now let me speak to counsel again.

(At the Bench.)

THE COURT: Before we ask this next question, Mr. Wright, do you have any objection to this verdict as it is? I do not see that you can have any objection.

MR. WRIGHT: It does not seem --

THE COURT: They find in favor of you on your charges. If they find no damages, they still established a liability. They are only entitled to damages if you find damage has occurred.

It seems to me under the evidence of the case this jury could conceivably find a violation of the Anti-Trust laws without any actual amount of damages.

MR. SHEA: This is clearly the verdict, your Honor. I do not see much you can do about it.

MR. WRIGHT: That is what they did. I suggest that I do not see how
21,156 the instructions of the Court could have been followed and this result reached. But --

MR. SHEA: This is their verdict. I do not see anything you can do.

THE COURT: I am going to ask them to go back and ask them to assess damages, even it is nominal.

MR. GATES: You do not have a right to, Your Honor.

MR. SHEA: No, Your Honor.

THE COURT: Is there any authority for that?

MR. SHEA: Yes, Your Honor.

THE COURT: Can you have a violation of anti-trust laws and find liability without damages?

MR. McGLOTHLIN: That is what the statute says, your Honor.

MR. SHEA: Your Honor, take their verdict and then you decide what the interpretation here should be. Take their verdict and then interpret it.

THE COURT: If there are no damages, it ought to be a verdict for the Defendant.

MR. SHEA: Your Honor interprets it.

MR. BALL: This will be entered with the verdict, your Honor.

THE COURT: I think I will let the jury go back out and tell them that I am not going toaccept this verdict, unless they make some assessment as to nominal damages -- it can be any amount they wish to put in there.

MR. McGLOTHLIN: Your Honor --

MR. RHOADS: We object to that.

MR. McGLOTHLIN: That is reversible error. These jurors have found he was not injured in his property or business. That is the statute. That is what the anti-trust laws say.

MR. WRIGHT: I think there is no verdict, if they go out and return a verdict for these defendants, it is another matter.

MR. McGLOTHLIN: We are entitled to have this verdict entered on the records of the Court.

MR. WRIGHT: They either return a verdict for the Defendant or for the Plaintiffs. But, if it is plaintiff, they assess damages.

MR. SHEA: His Honor put his charge very properly. The issues are defined. Now, you also gave them this verdict, and it seems to me that they have been fully-- you accept the verdict and then we will argue out the question of interpretation of it. This is a simple way to do it.

MR. BALL: Take a short recess.

THE COURT: Before we answer this last question, we will take a short recess. Ask the jury to retire.

21,158 (In Open Court.)

(The jury retired to the jury room. 3:25 p.m.)

THE COURT: It seems to me I should tell the jury again the three things they should consider: One is whether or not the conspiracy alleged by the Plaintiff, if that has been proved, was there a causal connection.

Was there any damages suffered by the Plaintiff.

If he suffered damages, the amount of the damages.

Now, if he suffered no damages, does it make any difference whether there is a violation of the Anti-Trust Laws?

MR. McGLOTHLIN: In my opinion, it does not. This is the final verdict which I think we are entitled to have entered on the records of the Court.

MR. GATES: That is right.

MR. McGLOTHLIN: In order to recover, you have five things: Conspiracy, the dangerous probability; you have the intent that relates to the rate

reductions; you have the multiple causation problem. Only then do you get the amount.

They have come back and told your Honor under the charges you gave them, we do not find one of those elements.

THE COURT: Why didn't they find for the defendants, then?

21,159 MR. WRIGHT: I think --

THE COURT: Excuse me. Just a moment.

MR. McGLOTHLIN: We are entitled to have this verdict made a part of the record of this Court. If your Honor wants to take action thereafter with respect to it, you have that power. Certainly, this is a verdict signed by the Foreman, agreed to by the jury and brought in and reported to --

THE COURT: I do not have to accept it. I do not think it is a legal verdict.

MR. McGLOTHLIN: I understand --

MR. SHEA: May I make a suggestion?

THE COURT: Yes.

MR. SHEA: You gave the best charge that could be given. What I want to suggest to your Honor is this: You have given them the fullest charge, gave them time to deliberate. You gave them the form of the verdict. They came in and filled it out and responded to every question. Now, on the question of interpretation, we can argue that out.

THE COURT: That is just what is going to happen. You are going to argue for a directed verdict. Certainly you are.

MR. GATES: Certainly.

21,160 THE COURT: Just a minute. I do not have to take what I think might be an illegal verdict.

I am going to tell them if they find for the Plaintiff against two or more of the defendants, if they find any damages -- it can be any amount, nominal or any amount. If they do not find any damages, then they ought to find for the defendants.

MR. McGLOTHLIN: If they find no damages, they should find for the defendants.

THE COURT: That is what the law is.

MR. WRIGHT: They have disregarded your Honor's instructions to return a general verdict.

THE COURT: I am going to tell them if they find no damages -- they have to find damages even if it is six cents.

MR. BALL: You have that point, your Honor.

THE COURT: Yes, I am going to make it clear to them.

MR. McGLOTHLIN: I would let it lie, but I am not in charge.

MR. SHEA: You have something there, your Honor.

MR. WRIGHT: There is one thing more on this.

THE COURT: I am going to read the damage charge.

MR. WRIGHT: I wish to make a formal motion for a mistrial. I think that the Jury has so far misunderstood the Court's instructions that there could be no proper verdict at this point. I would like to make a formal motion for mistrial on that ground.

21,161 THE COURT: I will get the part of the charge on damages and I will read it again.

MR. GATES: They left your charge on my table, your Honor, I will get it for you.

MR. RHOADS: May I make objection in advance to any suggestion that the jury, in the face of its present verdict, may render a six-cent or nominal damage amount as damages.

THE COURT: I will instruct the jury what I think the law is.

MR. RHOADS: Thank you, sir. I wanted my objection on the record.

THE COURT: Yes.

* * *

TO THE JURY BY THE COURT

THE COURT: Now, Mr. Foreman, and Ladies and Gentlemen of the Jury: The Court believes and feels that you probably have not quite either comprehended or understood the Court's charge on the question of damages. The Court will first refer to that particular part of the charge and I will read it to you

21,162 "I will not instruct you with respect to damages and the standards which the Plaintiff must meet to sustain its burden of proving that it has been damaged.

"You are not to assume from the fact that I instruct you on damages that I hold to the view that the Plaintiff has or has not proved that any of the defendants engaged in a conspiracy, or that any of them engaged in any acts in furtherance of such a conspiracy, or that the Plaintiff has or has not been damaged. These matters are, of course, for you, the Jury, to decide. Plaintiff has the burden of proving the existence of the causal relationship between defendants' alleged misconduct and injury to the Plaintiff. That is, it must prove by a fair preponderance of the evidence that its business or property has in fact been damaged as a direct result of a conspiracy, as previously defined, among two or more of the Defendants.

"Proof of this necessary causal relationship requires something more than proof that one or more of the defendants did something at or about the same time that the Plaintiff's business declined.

"Now, to simplify the matter, there are three things you must find in a civil anti-trust suit: First, that the conspiracy or combination has been proved by a fair preponderance of the evidence as alleged by the Plaintiff:

21,163 "Second, that there was a causal relationship between that business, that conspiracy and some damage to the Plaintiff's business; then, if you find that there was damage to the Plaintiff's business, how much was the damage? Now it does not make any difference what the damage was. It can be nominal damage. I am not suggesting you arrive at any amount. There is no minimum or no maximum-- no minimum, at least. In other words, if you believe that there was a conspiracy as the Plaintiff alleged, and that there was a causal connection between the conspiracy and any damages to the Plaintiff: But, if you believe there were no damages, then, of course, as I think I have indicated before, I think the defendants are entitled to a verdict. But, if you find even a nominal sum for the Plaintiff, you believe the conspiracy existed, there was a causal relationship between the conspiracy and damage to the plaintiff's business, then you can assess the damage in any reasonable amount or any amount that you think the plaintiff was damaged."

The Court does not believe this is a legal verdict. I am going to ask you to return to your jury room and deliberate further. I will not accept this verdict.

21,164 Just a minute. I will hear you after the jury retires. Then I will hear counsel.

MR. BALL: Thank you, Your Honor.

(The jury retired at 3:31 o'clock p.m.)

THE COURT: All right, Mr. Wright.

MR. BALL: I think the Court misspoke itself. I think the Court did not intend that it did not accept the verdict with respect to those defendants.

THE COURT: Well, we will come to that. We will cross that bridge when we come to it.

Mr. Wright.

MR. WRIGHT: I would like to make a formal motion for a mistrial and move that the jury be discharged upon the ground that they have so completely misunderstood the Court's instructions in the case that there could be no fair verdict from this jury.

THE COURT: Well, I will deny the motion.

MR. McGLOTHLIN: I would like to enter a formal motion that judgment be entered for the defendants upon the verdict as handed to your Honor.

THE COURT: The Court does not believe, as the verdict was handed to the Court, that that was a legal verdict, and the Court feels that, in order to constitute a violation of the anti-trust laws some damage must have existed or occurred, no matter whether it is two cents or six cents or $10,000. It does not

21,165 make any difference. Those are the three things I am sure you must prove. The Court will not accept the verdict. I have ruled on that.

MR. SHEA: Your Honor --

MR. RHOADS: May I approach?

THE COURT: Just a minute. I will hear everyone.

MR. SHEA: I take it no such problem exists with respect of those defendants for whom the jury has found for the Defendants.

THE COURT: They undoubtedly will find the same way.

MR. SHEA: They have already found. They have already announced their verdict in respect of the defendants for whom they have found.

THE COURT: I understand that.

MR. SHEA: I take it your Honor has not --

THE COURT: I have not formally received the verdict. I do not think it is a legal verdict in its present form.

MR. SHEA: I take it, your Honor, your only problem is with respect to the question of those defendants in regard to which the jury has found for the Plaintiff and has found no damages. There is no problem certainly about it --

21,166 THE COURT: We will decide that later.

Now, Judge Rhoads, do you wish to say something?

MR. RHOADS: May I formally object to that portion of your Honor's additional charge in which you suggested that the jury might retire and find damages in any amount against any of the defendants in this case.

THE COURT: Any amount. I said they may find nominal damages in a reasonable amount.

MR. RHOADS: I meant your reference to nominal damages or any other amount.

THE COURT: We will take an adjournment.

MR. GATES: Your Honor --

THE COURT: You want to make an objection? All right.

MR. GATES: I assume objections which have been registered by other defense counsel are preserved for all defense counsel; am I correct in that?

THE COURT: That is correct.

MR. SHEA: May I make a formal motion for a judgment on the verdict with respect to the Atlantic, Southern Railway and Atlantic Seaboard?

THE COURT: Motion is denied.

(At 3:40 o'clock p.m., Court recessed until return of Court.)

21,167 (The jury is absent from the courtroom)

MR. RHOADS: May I be heard before the jury returns?

THE COURT: Yes. All right, Colonel Rhoads.

MR. RHOADS: Your Honor pleases, before the jury returns, I would like formally to object to the refusal of your Honor to accept and record the verdict of the jury as rendered; to your Honor's refusal to discharge the jury upon the rendition of the verdict; to your Honor's further refusal to enter judgment for all defendants on the verdict as rendered; further, to your Honor's supplemental charge and particularly to that portion of your Honor's charge to the jury in which the Court indicated and directed to the jury that it should retire and consider further whether damages in any amount may or should be found against any of the defendants; and, in effect, thereby requiring the jury to reconsider a verdict, and render a verdict, in some amount, against the five defendants against whom the verdict was entered as recorded by the jury.

Further, to your Honor's refusal to accept the verdict in favor of those defendants in whose favor the jury did render a verdict.

THE COURT: Well, Colonel Rhoads, all I can say to you is that the 21,168 Court did not formally receive the entire verdict. It was not a complete verdict of the jury until the amount was stated. The Court felt that it is not a violation of the Clayton Act, Section 4 of the Clayton Act, unless the jury first finds that there was a conspiracy or combination and restraint of trade, or to drive Riss out of business.

They must further find, as a result of that conspiracy, the Plaintiff, or Riss was damaged.

They must further find to what extent he was damaged. Now, it is the purpose of the Clayton Act, I think-- if the jury stated that they, in effect, found a conspiracy against five defendants, I think that was the number -- five defendants-- but they found no damages then, under the instructions of the Court, the Court feels that the jury should have returned a verdict for the defendants. Therefore, the Court felt that the jury probably did not quite understand the charge on damages, or that it did not properly apply that charge that I gave.

I feel that under the circumstances the jury had a right, or I had a right to properly instruct the jury or re-read what I told them in my general

charge and have them retire to the jury room. That is done quite often in cases where the jury is confused on some question of law.

Your objections are noted.

21,169 MR. RHOADS: May I simply reply, sir, that it is our theory and understanding, that as the jury has found a verdict that there were no damages against any defendant, that under such circumstances, the verdict as rendered is tantamount to a verdict in favor of all defendants.

THE COURT: Very well. You have your objections noted.

Bring in the jury.

(The jury were in the jury box at 22 minutes before 5 o'clock p.m.)

DEPUTY CLERK: Mr. Foreman, may I have the verdict?

THE FOREMAN: Yes. (Handing verdict to Clerk.)

(The verdict was handed to the Court.)

DEPUTY CLERK: Mr. Foreman, will you please rise? What is the amount of your verdict?

THE COURT: No, no. Let us start from the beginning and go all the way through this form of verdict again. I have not formally received the verdict. Now, start, from the beginning.

Mr. Walther, if you are tired, I think you may be seated.

THE FOREMAN: I feel better standing up.

THE COURT: All right.

29,170 DEPUTY CLERK: What is your verdict as to the Plaintiff against each of the following defendants?

The Association of American Railroads?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: The Association of Western Railways?

THE FOREMAN: For the Plaintiff.

DEPUTY CLERK: Traffic Executives Association - Eastern Railroads?

THE FOREMAN: For the Plaintiff.

DEPUTY CLERK: Eastern Railroad Presidents Conference?

THE FOREMAN: For the Plaintiff.

DEPUTY CLERK: Carl Byoir & Associates, Inc.?

THE FOREMAN: For the Plaintiff.

DEPUTY CLERK: Atlantic Coast Line Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Atchison, Topeka & Santa Fe Railway Company?

THE FOREMAN: For the defendants.

DEPUTY CLERK: Baltimore & Ohio Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Chesapeake & Ohio Railway Company?

21,171 THE FOREMAN: For the Defendant.

DEPUTY CLERK: Chicago, Burlington & Quincy Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Chicago, Milwaukee & St. Paul and Pacific Railroad Company?

THE FOREMAN: For the Defendant.

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Chicago and Northwestern Railway Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Chicago, Rock Island and Pacific Railroad Company

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Erie Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Great Northern Railway Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Illinois Central Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Missouri-Kansas-Texas Railroad Company.

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Missouri-Pacific Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: New York Central Railroad Company

21,172 THE FOREMAN: For the Defendant.

DEPUTY CLERK: Northern Pacific Railway Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: The Pennsylvania Railroad Company?

THE FOREMAN: For the Plaintiff.

DEPUTY CLERK: St. Louis - San Francisco Railway Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Southern Pacific Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Union Pacific Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Wabash Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Minneapolis, St. Paul Sault Ste Marie Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Southern Railway Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: Seaboard Air Line Railroad Company?

THE FOREMAN: For the Defendant.

DEPUTY CLERK: What is the amount of your verdict?

THE FOREMAN: $75,000.

* * *

POLLING OF THE JURY

21,174 MR. WRIGHT: I would request that the jurors be polled individually.

THE COURT: Let me ask you this, Mr. Wright, in connection with polling the jury: Would it be satisfactory if the Clerk simply asks each juror, "Is your verdict the same as that announced by the foreman as to the Plaintiff against each defendant in this case, and as to the total amount of damages?"

Is that satisfactory?

MR. WRIGHT: Surely.

THE COURT: Use this form.

DEPUTY CLERK: You may be seated again.

Mary E. Shaw, please rise.

Mary E. Shaw, is your verdict the same as that announced by your foreman as to the Association of American Railroads?

JUROR SHAW: Yes, it is.

DEPUTY CLERK: As to the Association of Western Railways?

JUROR SHAW: Yes.

DEPUTY CLERK: I can't hear you, Mrs. Shaw.

THE COURT; Just answer "yes" if it is the same.

JUROR SHAW: Yes.

21,175 DEPUTY CLERK: Traffic Executives Association - Eastern Railroads?

JUROR SHAW: Yes.

DEPUTY CLERK: Eastern Railroads Presidents Conference?

JUROR SHAW: Yes.

DEPUTY CLERK: Carl Byoir & Associates, Inc.?

JUROR SHAW: Yes.

JUROR SHAW: Yes.

DEPUTY CLERK: Atlantic Coastline Railroad Company?

JUROR SHAW: Yes.

THE COURT: Do you have a form you can follow?

Mr. Clerk, you did not quite understand.

MR. WRIGHT: I do not think the whole thing is necessary at all.

THE COURT: Just read this to the jury, just simply say to the juror: Is your verdict the same as that announced by the foreman as to the plaintiff against each defendant in this case and as to the total amount of damages. That is all you have to do.

Call their names and ask them to answer that question.

THE JUROR: Shall I be seated?

THE COURT: He will ask you that question.

DEPUTY CLERK: Mary E. Shaw, is your verdict the same as that announced by the foreman as to the plaintiff against each defendant in this case and as to the total amount of damages?

21,176 JUROR SHAW: Yes.

DEPUTY CLERK: Sarah E. Smith. Is your verdict the same as that announced by the foreman as to the plaintiff against each defendant in this case and as to the total amount of damages?

JUROR SMITH: Yes, it is.

DEPUTY CLERK: Ethan Walther. Is your verdict the same as that previously announced by you, sir?

JUROR WALTHER: Yes, it is.

DEPUTY CLERK: Mr. Charles H. Purce. Is your verdict the same as that announced by the foreman as to the plaintiff against each defendant in this case and as to the total amount of damages?

JUROR PURCE: Yes.

DEPUTY CLERK: Mrs. Lillian W. Harry. Is your verdict the same as that announced by the foreman as to the plaintiff against each defendant in this case and as to the total amount of damages?

JUROR HARRY: Yes, it is.

DEPUTY CLERK: Mrs. Mabel K. Wells. Is your verdict the same as that announced by the foreman as to the plaintiff against each defendant in this case and as to the total amount of damages?

21,177 JUROR WELLS: Yes, it is.

DEPUTY CLERK: Mr. James E. Jones, is your verdict the same as that announced by your foreman as to the plaintiff against each defendant in this case and as to the total amount of damages?

JUROR JONES: Yes, it is.

DEPUTY CLERK: Miss Grace M. Hinze, is your verdict the same as that announced by your foreman as to the plaintiff against each defendant in this case and as to the total amount of damages?

JUROR HINZE: Yes, it is.

DEPUTY CLERK: Joseph E. Lezyczynski, is your verdict the same as that announced by your foreman as to the plaintiff against each defendant in this case, and as to the total amount of damages?

JUROR LEZYCZYNSKI: Yes, it is.

DEPUTY CLERK: Mrs. Agnes R. Stover, is your verdict the same as that announced by your foreman as to the plaintiff against each defendant in this case, and as to the total amount of damages?

JUROR STOVER: Yes, it is.

DEPUTY CLERK: Mr. Wesley T. Bellamy, is your verdict the same as that announced by your foreman as to the plaintiff against each defendant in this case, and as to the total amount of damages?

21,178 JUROR BELLAMY: Yes, it is.

DEPUTY CLERK: Miss Nellie R. Boyette, is your verdict the same as that announced by your foreman as to the plaintiff against each defendant in this case, and as to the total amount of damages?

JUROR BOYETTE: Yes.

DEPUTY CLERK: The jury has been polled, your Honor.

THE COURT: The jury may be excused.

(The jury was excused at 4:50 o'clock p.m.)

THE COURT: Pursuant to Section 4 of the Clayton Act, the Clerk will make an entry to the effect that the award to the Plaintiff in this case will be three times the amount of the verdict of the jury, besides costs of the suit and reasonable attorneys' fees.

All right, Mr. Clerk, file the original verdict.

* * *

(HEADING OMITTED) Civil Action No. 4056-54 - Filed March 17, 1961

ARGUMENT ON ATTORNEY'S FEE

* * *

Now, you cannot help in considering counsel fees here, sir, and I am going to urge it with the utmost sincerity, that you cannot help but take the picture of this case from start to finish when you are considering what counsel are entitled to.

And when they talk about the time and effort directed toward winning the case, and Your Honor, they have used that word time and again, and not only in their arguments but in their briefs, winning the case.

You have to take that expression, victory or winning the case, in the framework of what did happen here.

Now, what happened? We all know the type of presentation that was made from the point of view of absolutes, dollar damages, and we know that Your Honor prior to the trial of this case did exactly what you would do in every case of this magnitude or lesser magnitude. You did everything you could to bring the parties together. Serious efforts were made and so serious and so hard --

THE COURT: I must say that we had the cooperation of counsel from the defense and plaintiff's counsel.

MR. RHOADS: Unquestionably so. There is no question about that. With the cooperation of both plaintiffs' and defendants' counsel in this

7 case efforts were made to settle, and on December 29th, I believe it was, of 1960, some nine of the defendants representing the East, made a firm offer of $400,000 to Mr. Riss. That was turned down.

Later on, before motions for directed verdicts were argued, Your Honor will recall that you called us back into your chambers again, and again the question of settlement was discussed, and at that time, sir, and this becomes a vitally important factor in determining what was the issue in

this case, at that time there was a firm offer of a million dollars, and possibly plus, sir, and Your Honor is familiar with that offer.

THE COURT: As I recall that conference, plaintiffs' counsel took the position that they would recommend the settlement, if he would accept it.

MR. RHOADS: That is exactly so, sir. There is no question about that.

THE COURT: On that figure of approximately a million dollars.

MR. RHOADS: Approximately, sir. It was certainly a million and the approximation was plus to the million and not minus the million. And counsel for plaintiff cooperated, and you will recall that at the end of the road that Mr. Riss said: I will not settle; his figure was in the area of $4 million; he would not settle.

And why? Because he said he intended to take a gamble, and the gamble were his words. And he took the gamble and lost.

A verdict of $75,000 rendered as single damages in this case is in my humble judgment not a victory and is not a win in this case.

THE COURT: I am sure of this, that I think I told plaintiff's counsel to tell the plaintiff that I recommended to him that he accept the settlement.

Do you recall that?

MR. RHOADS: I do, sir.

THE COURT: Mr. Wright, do you remember that?

And Mr. Layne remembers it.

I want to say again, as I have said many times during the trial, and this goes for counsel on both sides, that I don't think you could have gotten more competent counsel in a case of this magnitude than we had in this case. I have said that, and I have said it so many times, and whatever happened has happened.

* * *

JOINT APPENDIX

VOLUME VIII

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 16,206, 16,255, 16,376

THE ASSOCIATION OF WESTERN RAILWAYS, TRAFFIC EXECUTIVE ASSOCIATION-EASTERN RAILROADS, EASTERN RAILROAD PRESIDENTS CONFERENCE, et al., Appellants, v. RISS & COMPANY, INC., Appellee.	)	Nos. 16,206 and 16,376
THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, et al., Appellants, v. RISS & COMPANY, INC., Appellee.	)	No. 16,255

Appeal from a Judgment of the
United States District Court for the District of Columbia

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Joseph W. Stewart
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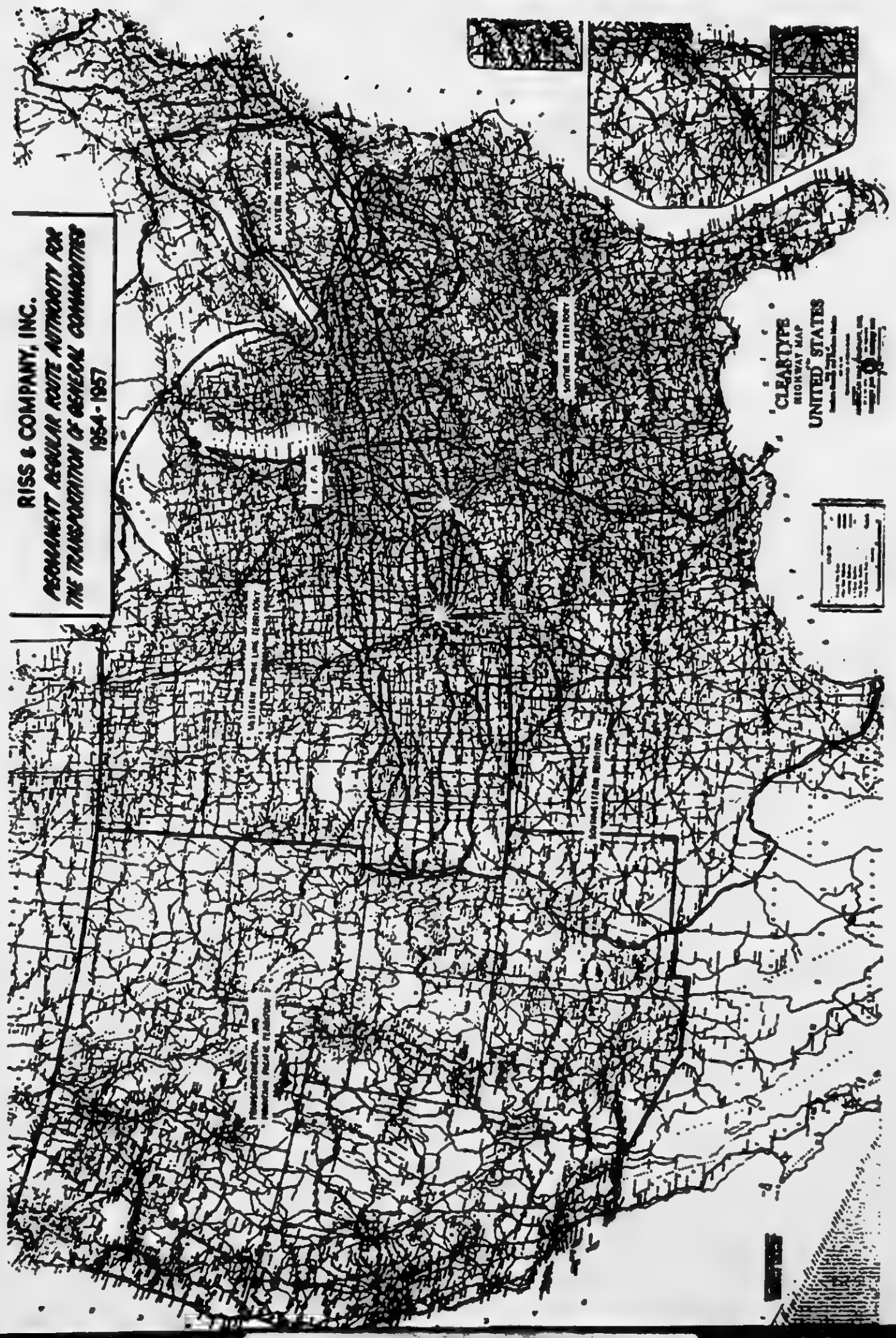
Plaintiff's Exhibit 1

Pl. Ex. 1



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Pl. Ex. 2.

Plaintiff's Exhibit 2

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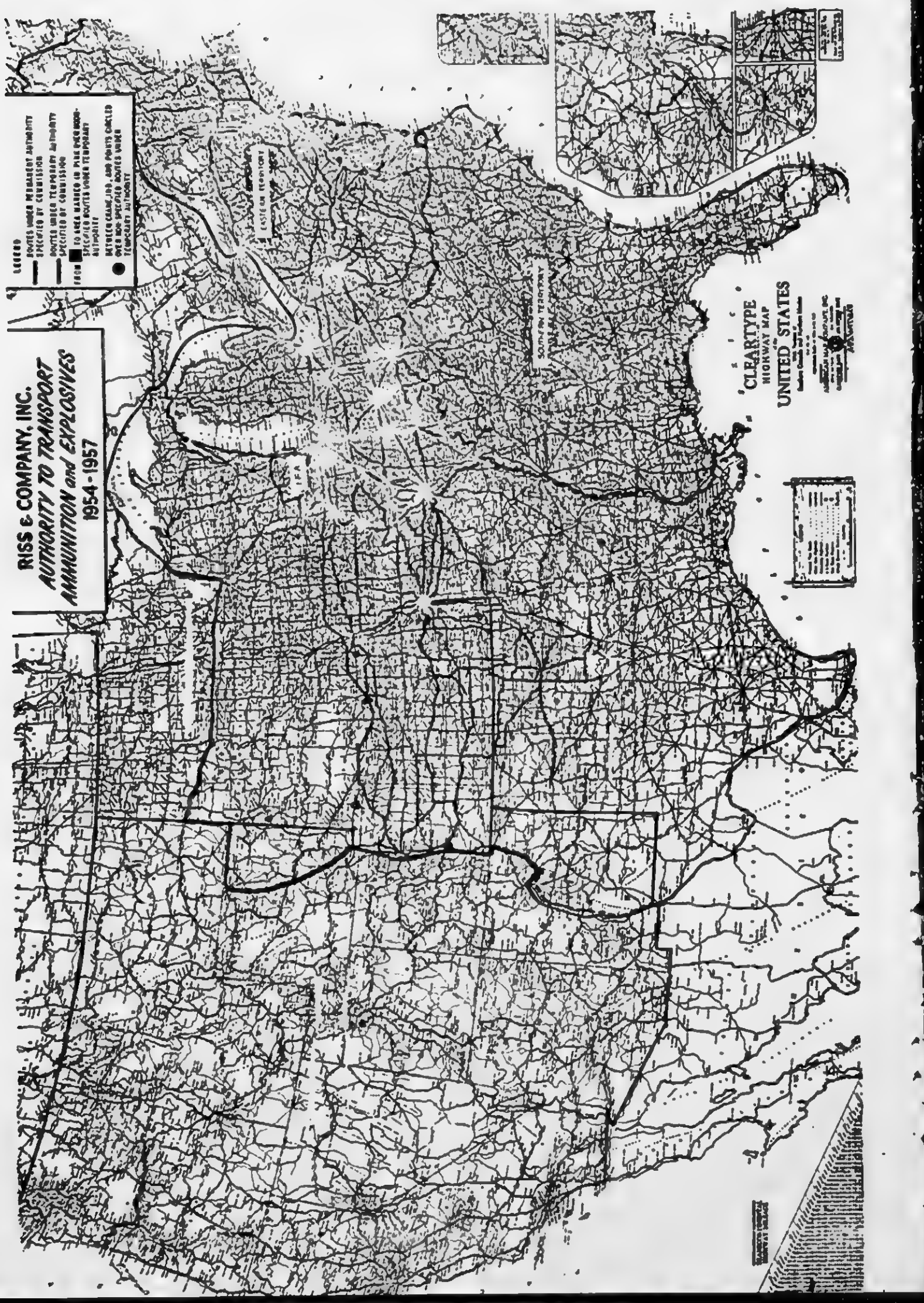
RISS & COMPANY, INC.
AUTHORITY TO TRANSPORT AMMUNITION and EXPLOSIVES
1954-1957
LEGEND
ROUTES UNDER PERMANENT AUTHORITY SPECIFIED BY COMMISSION
ROUTES UNDER TEMPORARY AUTHORITY SPECIFIED BY COMMISSION
TO AREA BOUNDED BY PINK CHECKED-SPECIFIED ROUTES UNDER TEMPORARY AUTHORITY
BETWEEN CITIES AND POINTS CIRCLED ONLY NON-SPECIFIED ROUTES UNDER TEMPORARY AUTHORITY
EXCLUSIVE TERRITORY
SOUTHERN TERRITORY
'CLEARTYPE
HIGHWAY MAP
UNITED STATES

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RISS & COMPANY, INC.

ABSTRACT OF PRESENTLY EFFECTIVE CERTIFICATED AUTHORITIES OF RISS & COMPANY, INC., AS ISSUED BY THE INTERSTATE COMMERCE COMMISSION IN THE MATTER OF DOCKET MC-200 AND ALL SUB NUMBERS.

CERTIFICATE NO. MC 200*

Effective June 16, 1953

REGULAR ROUTES:

General commodities, except livestock,

Between Kansas City, Mo., and Sterling, Colo., as follows:

From Kansas City over US Highway 40 via Oakley, Kans., to Limon, Colo., (also from Oakley over US Highway 83 to Halford, Kans., thence over US Highway 24 to Limon), thence over US Highway 40 to Denver, Colo., thence over US Highway 85 to Greeley, Colo., thence over US Highway 34 to junction US Highway 6, and thence over US Highway 6 to Sterling.

From Kansas City over US Highway 50 to junction US Highway 59, thence over US Highway 59 to Ottawa, Kansas, thence over US Highway 50-S to Garden City, Kans., thence over US Highway 50 to Pueblo, Colo., thence over US Highway 85 to Denver, Colo., and thence as specified above to Sterling; and

Return over these routes to Kansas City.

Between Salina, Kans., and Durant, Okla.:

From Salina over US Highway 81 to Waurika, Okla., thence over US Highway 70 to Durant, and return over the same route.

Between Hutchison, Kans., and junction Kansas Highway 17 and US Highway 81:

From Hutchison over Kansas Highway 17 to junction US Highway 81, and return over the same route.

Between Dodge City, Kans., and Ardmore, Okla.:

From Dodge City over US Highway 154 to Mullinville, Kansas, thence over US Highway 54 to Augusta, Kans., and thence over US Highway 77 to Ardmore, and return over the same route.

Between South Haven, Kansas, and junction US Highways 177 and 77:

From South Haven over US Highway 177 to junction US Highway 77, and return over the same route.

Between Kansas City, Mo., and Commerce, Okla.:

From Kansas City over Alternate US Highway 69 to Kansas City, Kans., thence over US Highway 69 to Commerce, and return over the same route.

Between Pittsburg, Kans., and Parsons, Kans.:

From Pittsburg over US Highway 160 to Parsons, and return over the same route.

Between Ottawa, Kans., and Denison, Tex.:

From Ottawa over US Highway 59 to Vinita, Okla, thence over US Highway 69 to Atoka, Okla., and thence over US Highway 75 to Denison, and return over the same route.

Between Amarillo, Tex., and Atoka, Okla.:

From Amarillo over US Highway 66 to Oklahoma City, Okla., thence over US Highway 270 to junction US Highway 75, and thence over US Highway 75 to Atoka, and return over the same route.

Service is authorized to and from all intermediate points on the above-specified routes; and the off-route point of Hugo,

Okla.; to be served over US Highway 70 from Durant.

Between Oklahoma City, Okla., and Chicago, Ill.:

From Oklahoma City over US Highway 66 to Gardner, Ill., thence over Alternate US Highway 66 to junction US Highway 66, thence over US Highway 66 to Chicago, and return over the same route.

Service is authorized to and from the intermediate points of Joplin, Springfield, and St. Louis, Mo., those between Oklahoma City and Joplin, and those between St. Louis, Mo., and Chicago.

Between Kansas City, Mo., and St. Louis, Mo., as follows:

From Kansas City over US Highway 40 to St. Louis.

From Kansas City over US Highway 50 to Sedalia, Mo., thence over US Highway 65 to junction US Highway 40, thence over US Highway 40 to St. Louis; and

Return over these routes to Kansas City.

Service is authorized to and from the intermediate points of Lees Summit, Warrensburg, and Sedalia, Mo., unrestricted, and Boonville and Columbia, Mo., except for articles for unusual value, Class A and B explosives, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading.

Between Springfield, Ill., and Kingdom City, Mo.:

From Springfield over US Highway 36 to junction US Highway 54, thence over US Highway 54 to Kingdom City, and return over the same route.

Service is not authorized to or from intermediate points or to or from the terminus of Kingdom City.

Between Kansas City, Mo., and Cameron, Mo.:

From Kansas City over US Highway 71 to St. Joseph, Mo., thence over US Highway 36 to Cameron, and return over the same route.

Service is authorized to and from all intermediate points.

Between Kansas City, Mo., and Springfield, Ill.:

From Kansas City over Alternate US Highway 69 via North Kansas City, Mo., to junction US Highway 69, thence over US Highway 69 to Cameron, Mo., thence over US Highway 36 to Springfield, and return over the same route.

Service is authorized to and from the intermediate points of Excelsior Springs, Cameron, and Hannibal, Mo., and those between Hannibal and Springfield, unrestricted, and those between Cameron and Hannibal, restricted to truckload lots except for pick-up or refrigerated products to be delivered at points beyond Cameron and Hannibal.

General commodities, except those of unusual value, Class A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between Chicago, Ill., and Denver, Colo., as follows:

From Chicago over US Highway 66 to junction Alternate US Highway 66, thence over Alternate US Highway 66 to Joliet, Ill., thence over US Highway 6 to Briarbluff, Ill., thence over unnumbered highway via Carbon Cliff, Ill., to Silvis, Ill., thence over Illinois Highway 92 to Moline, Ill., thence over US Highway 6 to junction US Highway 34, thence over US Highway 34 to Greeley, Colo., and thence over US Highway 85 to Denver.

From Chicago over US Highway 34 to junction Illinois Highway 92, thence over Illinois Highway 92 to Silvis, Ill., and thence as specified above to Denver.

From Chicago over US Highway 330 to junction US Highway 30, thence over US Highway 30 to junction US Highway 138, thence over US Highway 138 to Sterling, Colo., thence over US Highway 6 to junction US Highway 34, thence over US Highway 34 to Loveland, Colo., and thence over US Highway 87 to Denver.

From Chicago over US Highway 66 to junction Alternate US Highway 66, thence over Alternate US Highway 66 to junction US Highway 66, thence over US Highway 66 to Chenoa, Ill., thence over US Highway 24 to Peoria, Ill., thence over US Highway 150 to Galesburg, Ill., thence over US Highway 34 to Glenwood, Iowa, thence over US Highway 275 to Omaha, Nebr., thence over US Highway 6 to Denver; and

Return over the above-specified routes to Chicago.

Service is authorized to and from the intermediate points of Morris and Marseilles, Ill., and Tama, Iowa, unrestricted; Greeley and Sterling, Colo., and Chenoa, Ill., and those between Chenoa and Chicago, those between Greeley and Sterling, and those on US Highway 85 between Denver and Greeley, for pick-up and delivery, restricted to eastbound shipments of dried beans and onions, in truckload lots, and pickles, condiments, and canned foods and vegetables in truckload and less than truckload lots; all other intermediate points in Colorado for pick-up, restricted to eastbound shipments of dried beans and onions, in truckload lots, pickles, condiments, and canned foods and vegetables, in

truckload and less than truckload lots, and all other intermediate points in Nebraska, Iowa, and Illinois, for delivery, restricted to eastbound shipments of dried beans and onions in truckload lots, and pickles, condiments, and canned foods and vegetables in truckload and less than truckload lots; and the off-route points of Quincy, Ill., and Waterloo, Iowa, unrestricted.

Between St. Louis, Mo., and Decatur, Ill.:

From St. Louis over Alternate US Highway 67 to Alton, Ill., thence over Illinois Highway 140 to junction Illinois Highway 112, thence over Illinois Highway 112, to junction Illinois Highway 138, thence over Illinois Highway 138 to junction Illinois Highway 4 (near Benld, Ill.), thence over Illinois Highway 4 to Springfield, Ill., and thence over US Highway 36 to Decatur, and return over the same route.

Service is authorized to and from the intermediate and off-route points of Alton, Bunker Hill, Collinsville, Edinburg, Springfield, Taylorville, and Virden, Ill.

Between Alton, Ill., and Jacksonville, Ill., as follows:

From Alton over US Highway 67 to Jacksonville, and return over the same route.

From Alton over Illinois Highway 111 to Waverly, Ill., and thence over Illinois Highway 104 to Jacksonville, and return over the same route.

Service is authorized to and from the intermediate and off-route points of Bluffs, Chapin, Carrollton, Greenfield, Jerseyville, Kane, Meredosia, Roodhouse, Waverly, White Hall, and Woodson, Ill.

Between Jerseyville, Ill., and Pittsfield, Ill.:

From Jerseyville over Illinois Highway 16 to junction Illinois Highway 100, thence over Illinois Highway 100 to Detroit, Ill., and thence over US Highway 36 to Pittsfield, and return over the same route.

Service is not authorized to or from intermediate points.

Service is authorized to and from the off-route points of Griggsville, Summer Hill, and Rockport, Ill.

Between Hull, Ill., and Keokuk, Iowa:

From Hull over US Highway 36 to junction Illinois Highway 96, thence over Illinois Highway 96 to Hamilton, Ill., thence over Illinois Highway 10 to the Mississippi River, and thence across the Mississippi River to Keokuk, and return over the same route.

Service is authorized to and from the intermediate and off-route points of Carthage, Plainville, Quincy, and Warsaw, Ill.

Butter, eggs, and dressed poultry, in truckload lots,

From Kansas City, Mo., to Cincinnati, Ohio:

From Kansas City over US Highway 40 to Indianapolis, Ind., thence over US Highway 52 to Cincinnati.

Service is authorized to the intermediate points of Terre Haute and Indianapolis, Ind., for delivery only.

From Kansas City, Mo., to New York, N.Y.:

From Kansas City to Indianapolis, Ind., as specified above, thence over US Highway 40 to Cambridge, Ohio, thence over US Highway 22 to Pittsburgh, Pa., thence over US Highway 30 to Gettysburg, Pa., thence over US Highway 140 to Baltimore, Md., and thence over US Highway 1 to New York.

Service is authorized to the intermediate and off-route points

of Columbus, Ohio, Pittsburgh and Philadelphia, Pa., Baltimore, Md., and Camden and Jersey City, N.J., for delivery only.

From Chicago, Ill., to New York, N.Y.:

From Chicago over US Highway 20 to Maumee, Ohio, thence over US Highway 24 to Toledo, Ohio, thence over US Highway 68 to Perrysburg, Ohio, thence over US Highway 20 to junction US Highway 62, thence over US Highway 62 to Buffalo, N.Y., thence return over US Highway 62 to junction US Highway 20, thence over US Highway 20 to Auburn, N.Y., thence over New York Highway 5 to Syracuse, N.Y., thence over US Highway 11 to Lafayette, N.Y., thence over US Highway 20 to Albany, N.Y., thence over US Highway 9-W to junction US Highway 1, and thence over US Highway 1 to New York.

Service is authorized to the intermediate points of Toledo and Cleveland, Ohio, and Buffalo, N.Y. for delivery only; and

Return, with no transportation for compensation except as otherwise authorized herein, over these routes to Kansas City and Chicago.

Butter and eggs, in truckload lots,

From Kansas City, Mo., to Detroit, Mich.:

From Kansas City to Indianapolis as specified above, thence over US Highway 31 to Peru, Indiana, thence over US Highway 24 to Toledo, Ohio, and thence over US Highway 25 to Detroit; and

Return, with no transportation for compensation except as otherwise authorized herein, over the same route to Kansas City.

Service is authorized to the intermediate point of Toledo, Ohio, for delivery only.

Alcoholic liquors, eggs, poultry, dairy products, as defined by the Commission, and produce.

Between Cameron, Mo., and Chenoa, Ill.:

From Cameron over US Highway 69 to junction Missouri Highway 6, thence over Missouri Highway 6 to junction US Highway 24, thence over US Highway 24 to Chenoa, and return over the same route.

Service over this route is restricted to transportation of alcoholic liquors moving between Chicago and Peoria, Ill., on the one hand, and, on the other, Kansas City, Mo., and eastbound shipments of eggs, poultry, dairy products, and produce from points in Missouri on such route to Peoria, Quincy, and Chicago, Ill., and Points beyond on other of carrier's routes.

Salt,

From Pueblo, Colo.,to Canon City, Colo.:

From Pueblo over US Highway 50 to Canon City; and

Return, with no transportation for compensation except as otherwise authorized herein, over the same route to Pueblo.

Service is not authorized to or from intermediate points.

Petroleum products in containers, in truckload lots only,

From Okmulgee, Okla., to Denver, Colo., and Colby, Kans., as follows:

From Okmulgee over US Highway 75 to Tulsa, Okla., thence over US Highway 64 via Sand Springs, Okla., to Perry, Okla., thence over US Highway 77 to junction US Highway 177, thence over US Highway 177 to South Haven, Kans., thence over US Highway 81 to Wichita, Kans., thence as specified above to Denver.

From Okmulgee to Wichita, Kans., as specified above, thence over US Highway 81 to McPherson, Kans., thence over US Highway 50-N to Great Bend, Kans., thence over US Highway 281 to Russell, Kans., thence over US Highway 40 to Oakley, Kans., thence over US Highway 83 to Halford, Kans., and thence over US Highway 24 to Colby; and

Return, with no transportation for compensation except as otherwise authorized herein, over these routes to Okmulgee.

Service is authorized to the intermediate points of Dodge City, Ford, Great Bend, and Greensburg, Kans., and Pueblo and Lamar, Colo., for delivery only.

Petroleum products, other than in tank trucks,

From Eldorado and Wichita, Kans., to Pueblo and Pritchett, Colo., as follows:

From Eldorado over US Highway 54 to Wichita, Kans., thence to Pueblo as specified above.

Service is authorized to the intermediate point of Las Animas, Colo., restricted to delivery only.

From Wichita to Dodge City, Kans., as specified above, thence over Kansas Highway 45 to junction unnumbered highway approximately four miles northeast of Copeland, Kans., thence over unnumbered highway to junction US Highway 160 approximately five miles north of Sublette, Kans., and thence over US Highway 160 to Pritchett.

Service is authorized to the intermediate point of Springfield, Colo., restricted to delivery only; and the off-route point of Walsh, Colo., restricted to delivery only.

Return, with no transportation for compensation except as otherwise authorized, over these routes to Eldorado and Wichita.

Paper boxes, in truckload lots only,

From Sand Springs, Okla., to Denver, Colo.:

From Sand Springs as specified above to Denver; and

Return, with no transportation for compensation except as otherwise authorized herein, over the same route to Sand Springs.

Service is not authorized to or from intermediate points.

Canned Goods,

From Brighton, Colo., to Tulsa, Okla.:

From Brighton over US Highway 85 to Denver, Colo., thence as specified above to Tulsa; and

Return, with no transportation for compensation except as otherwise authorized herein, over the same route to Brighton.

Service is authorized to the intermediate point of Wichita, Kans., for delivery only, and the off-route of Muskogee and Bristow, Okla., for delivery only.

IRREGULAR ROUTES:

General Commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Between points in the Chicago, Ill., Commercial Zone as defined by the Commission, on the one hand, and, on the other, points in Cook, Dekalb, DuPage, Kane, Kankakee, Kendall, Lake, and Will Counties, Ill.

General Commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment,

Between Denison, Tex., and Colbert, Okla., on the one hand, and, on the other, Cartwright, Okla., and the Denison Dam Site in Texas and Oklahoma.

Dried Beans in bags,

From points in Colorado to Wichita, Arkansas City, and Anthony, Kans., El Reno, Muskogee, Altus, Henryetta, Oklahoma City, Okmulgee, Tulsa, Pawhuska, Norman, Vinita, Colgate, McAlester, Sayre, Poteau, Ardmore, Okemah, Mangum, Seminole, Supply, Ft. Sill, Enid, Alva, Fairview, Fairfax and Holdenville, Okla., with no transportation for compensation on return except as otherwise authorized herein.

*(This certificate embraces the operating rights in Certificate bearing same number (MC-200), issued January 26, 1950, which includes the operating rights in MC-48511, acquired by carrier herein pursuant to MC-F-1049, and assigned to MC-200 Sub 7, as modified by order dated March 30, 1953.)

CERTIFICATE NO. MC-200 SUB 6

Effective March 18, 1943.

General Commodities, except those of unusual value, and except dangerous explosives, commodities in bulk, and those requiring special equipment, over regular routes,

Between Augusta, Kans., and Iola, Kans.:

From Augusta over US Highway 54 to Iola, and return over the same route.

Between Sapulpa, Okla., and junction US Highways 75 and 270, about nine miles north of Calvin, Okla.:

From Sapulpa over US Highway 75 to junction US Highway 270 and return over the same route.

Service is not authorized to or from intermediate points.

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CERTIFICATE NO. MC-200 SUB 11

Effective August 9, 1941.

General commodities, except those of unusual value, and except dangerous explosives, commodities in bulk, and those requiring special equipment, over regular routes,

Between the junction of US Highway 40 and Missouri Highway 7 and Lake City, Missouri:

From the junction of US Highway 40 and Missouri Highway 7 and Lake City, Missouri

From the junction of US Highway 40 and Missouri Highway 7 over Missouri Highway 7 to junction unnumbered highway, thence over unnumbered highway to Lake City and return over the same route.

Service is not authorized to or from intermediate points.

Service is authorized to and from off-route points within two miles of Lake City.

Between Kansas City, Mo., and Lake City, Mo.:

From Kansas City, Mo., over US Highway 24 to junction Missouri Highway 7, thence over Missouri Highway 7 to junction unnumbered highway, thence over unnumbered highway to Lake City, and return over the same route.

Service is not authorized to or from intermediate points.

Service is authorized to and from off-route points within two miles of Lake City.

Between Wentzville, Mo., and St. Louis, Mo.:

From Wentzville, over US Highway 40 to St. Louis, and return over the same route.

Service is authorized to and from intermediate points on US Highway 40 within two miles of Welden Springs, Mo., including

Welden Springs.

CERTIFICATE NO. MC-200 SUB 13.

Effective March 9, 1943.

Dressed poultry, in shipments of 15,000 pounds each from any one consignor, over regular routes.

Service is authorized from Liberty, Mo., as an off-route point in connection with said carrier's previously authorized regular route operations.

CERTIFICATE NO. MC-200 SUB 14

Effective January 19, 1942.

General commodities, except those of unusual value, and except commodities in bulk and those requiring special equipment, over irregular routes,

Between Denver, Colo., and Denver Ordnance Plant, Remaco, Colo.

RESTRICTION: Service at Denver Ordnance Plant is restricted to traffic moving to or from points which said carrier is presently authorized to serve, except Denver.

CERTIFICATE NO. MC-200 SUB 17

Effective January 29, 1942.

General commodities, except those of unusual value, and except dangerous explosives, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment, over a regular route,

Between Catoosa, Okla., and Tulsa, Okla.:

From Catoosa over US Highway 66 to junction Oklahoma Highway 33, thence over Oklahoma Highway 33 to Tulsa; and return over the same route.

Service is not authorized to or from intermediate points not

previously authorized.

Service is authorized to and from the off-route point of the Bomber Assembly Plant Site, northeast of Tulsa.

CERTIFICATE NO. MC-200 SUB 30

Effective July 30, 1942.

Explosives, over regular routes,

Between Chicago, Ill., and Denver, Colo.:

From Chicago over US Highway 66 to junction alternate US Highway 66, thence over alternate US Highway 66 to Joliet, Ill., thence over US Highway 6 to Briarbluff, Ill., thence over unnumbered highway via Carbon Cliff, Ill., to Silvis, Ill., thence over Illinois Highway 92 to Moline, Ill., thence over US Highway 6 to junction US Highway 34, thence over US Highway 34 to Greeley, Colo., and thence over US Highway 85 to Denver, Colo.;

From Chicago over US Highway 34 to junction Illinois Highway 92, thence over Illinois Highway 92 to Silvis, Ill., and thence to Denver, as specified above;

From Chicago over US Highway 330 to junction US Highway 30, thence over US Highway 30 to junction US Highway 138, thence over US Highway 138 to Sterling, Colo., thence over US Highway 6 to junction US Highway 34, thence over US Highway 34 to Loveland, Colo., and thence over US Highway 87 to Denver;

From Chicago over US Highway 66 to junction alternate US Highway 66, thence over alternate US Highway 66 to junction US Highway 66, thence over US Highway 66 to Chenoa, Ill., thence over US Highway 24 to Peoria, Ill., thence over US Highway 150 to Galesburg, Ill., thence over US Highway 24 to Glenwood, Iowa, thence over US Highway 275 to Omaha,

Nebr., thence over US Highway 6 to Denver; and

Return over the same routes to Chicago.

Service is authorized to and from the intermediate and off-route points of Morris, Quincy, and Marseilles, Ill., and Tama and Waterloo, Iowa.

Between St. Louis, Mo., and Keokuk, Iowa:

From St. Louis over US Highway 67 to Jerseyville, Ill., thence over Illinois Highway 16 to junction Illinois Highway 100, thence over Illinois Highway 100 to Detroit, Ill., thence over US Highway 36 to junction Illinois Highway 96, near Hull, Ill., thence over Illinois Highway 96 to Hamilton, Ill., thence over Illinois Highway 10 to the Mississippi River, thence across the Mississippi River to Keokuk; and return over the same route.

Service is authorized to and from the intermediate and off-route points of Pittsfield, Hull, Barry, Jerseyville, Quincy, Kinderhook, Plainville, Griggsville, Winchester, Collinsville, Carthage, Warsaw, Rockport, and Summer Hill, Ill.

Between St. Louis, Mo., and Jacksonville, Ill.:

From St. Louis over US Highway 67 to Jacksonville;

Service is authorized to and from the intermediate and off-route points of Jerseyville, Carrollton, Kane, White Hall, Roodhouse, Woodson, Alton, Winchester, Bluffs, Riggston, Meredosia, Greenfield, Alexander, Edinburg, and Chapin, Ill.

From St. Louis over US Highway 67 to Alton, Ill., thence over Illinois Highway 111 to Waverly, Ill., thence over Illinois Highway 104 to Jacksonville; and

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Return over the same routes to St. Louis.

Service is authorized to and from the intermediate and off-route points of Waverly, Alexander, and Greenfield, Ill.

Between St. Louis, Mo., and Decatur, Ill.:

From St. Louis over U.S. Highway 66 to Springfield, Ill., and thence over U.S. Highway 36 to Decatur;

Service is authorized to and from the intermediate and off-route points of Litchfield, Springfield, and Taylorville, Ill.

From St. Louis over U.S. Highway 67 to Alton, Ill., thence over Illinois Highway 140 to junction Illinois Highway 112, thence over Illinois Highway 112 to junction Illinois Highway 138, thence over Illinois Highway 138 to junction Illinois Highway 4 near Benld, Ill., thence over Illinois Highway 4 to Springfield, Ill., and thence over U.S. Highway 36 to Decatur; and

Return over the same routes to St. Louis.

Service is authorized to and from the intermediate points of-Bunker Hill and Virden, Ill.

Explosives over irregular routes.

Between Kansas City, Mo., and Lake City, Mo., and points and places within two miles thereof.

Between St. Louis, Mo., and Welden Springs, Mo., and points and places within two miles thereof.

Between Denison, Tex., and Colbert, Okla., on the one hand, and, on the other, the Denison Dam Site in Texas and Oklahoma, and Cartwright, Okla.

Between points and places in the CHICAGO, ILL., COMMERCIAL ZONE, as defined by the Commission 1 M.C.C. 673, on the one hand, and on the other, points in Cook, Dekalb, DuPage, Kane, Kankakee, Kendall, Lake and Will Counties, Ill.

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CERTIFICATE NO. MC-200 SUB 32

Effective May 12, 1942.

General commodities, except those of unusual value, and except dangerous explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over irregular routes,

Service is authorized to and from points and places within five miles of Wichita, Kans., as intermediate or off-route points in connection with said carrier's previously authorized regular route operations.

CERTIFICATE NO. MC-200 SUB 33

Effective November 5, 1942.

General commodities, except those of unusual value, and except dangerous explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over regular routes,

Service is authorized to and from points and places in the KANSAS CITY, MO., KANSAS CITY, KANS., COMMERCIAL ZONE, as defined by the Commission in 31 M.C.C. 5, as off-route points in connection with said carrier's previously authorized regular route operation except authority is not granted to transport combines (harvester-threshers) originating in Independence, Mo., on the one hand, and, on the other, destined to points and places in Colorado, Iowa, Illinois, Kansas, Nebraska, Oklahoma and Texas.

CERTIFICATE NO. MC-200 SUB 46*

Effective January 5, 1954.

REGULAR ROUTES:

General commodities, except those of unusual value, Class A and B explosives, livestock, live poultry, household goods as defined by

the Commission, commodities in bulk, and those requiring special equipment,

Route 1 — Between Kansas City, Mo., and New York, N. Y., serving the intermediate points of Columbia, Mo., Springfield, Ill., Fort Wayne, Ind., Mansfield, Ashland, and Cleveland, Ohio, Erie, Pa., Fredonia, Buffalo, Geneva, Syracuse, Utica, Schenectady, and Albany, N. Y., and the off-route point of Painesville, Ohio:

From Kansas City over US Highway 40 to Kingdom City, Mo., thence over US Highway 54 to junction US Highway 36, west of Pittsfield, Ill., thence over US Highway 36 via Springfield, Ill., to Decatur, Ill., thence over Illinois Highway 48 to Fullerton, Ill., thence over US Highway 54 (old Illinois Highway 48) to Onarga, Ill., thence over US Highway 45 (US Highways 54 and 45) to Gilman, Ill., thence over US Highway 24 to Fort Wayne, Ind., thence over US Highway 30 via Van Wert, Ohio to Delphos, Ohio, thence over US Highway 30-N to Mansfield, Ohio, thence over US Highway 42 to Cleveland, Ohio, thence over Ohio Highway 84 to Ashtabula, Ohio, thence over US Highway 20 to junction US Highway 62, thence over US Highway 62 to junction New York Highway 5 near Buffalo, N. Y., thence over New York Highway 5 to Albany, N. Y., thence over US Highway 9 to Fort Lee, N. J., thence across the George Washington Bridge to New York, and return over the same route.

Route 2 — Between Albany, N. Y., and New York, N. Y., serving the intermediate point of Yonkers, N. Y.:

From Albany over US Highway 9 to New York and return over the same route.

Route 3

Between Kingdom City, Mo., and New York, N.Y., serving the intermediate points of St. Louis, Mo., East St. Louis, Ill., Terre Haute, Indianapolis, and Richmond, Ind., Springfield, Columbus, Martins Ferry, and Steubenville, Ohio, Pittsburgh and Harrisburg, Pa., Newark, and Jersey City, N.J., and the off-route points of McKees Rocks, Pa., Hoboken and Passaic, N.J., with no service authorized to or from Kingdom City; service at intermediate and off-route points subject to the condition that no service is authorized between Philadelphia, Pa., and New York, N.Y., or between Elizabeth, Trenton, Newark, Jersey City, and Passaic, N.J., on the one hand, and, on the other, Philadelphia, Pa., and New York, N.Y.:

From Kingdom City over US Highway 40 to Wentzville, Mo., thence over US Highway By-Pass 40 (formerly US Highway 40) to junction US Highway Alternate 40, thence over US Highway Alternate 40 (formerly US Highway 40) via Pattonville, Mo., to St. Louis, Mo., thence over US Highway 40 via Collinsville and Greenville, Ill., to Mulberry Grove, Ill., thence over US Highway Alternate 40 (formerly US Highway 40) via Vandelia, Ill., to junction US Highway 40 near Brownstown, Ill.,thence over US Highway 40 to Bridgeport, Ohio, thence over Ohio Highway 7 via Martins Ferry, Ohio to junction US Highway 22 near Steubenville, Ohio, thence over US Highway 22 via Pittsburgh, Ebensburg, and Harrisburg, Pa., to junction New Jersey Highway 28 near Raritan, N.J., thence over New Jersey Highway 28 to Elizabeth, N.J., thence

over New Jersey Highway 27 to Newark, N. J., thence over city streets and connecting highways to New York, and return over the same route.

Route 4 — Between Kansas City, Mo., and Pittsfield, Ill., serving the intermediate point of Hannibal, Mo., but with no service authorized at Pittsfield, Ill.:

From Kansas City over US Highway Alternate 69 to junction US Highway 69, thence over US Highway 69 to Cameron, Mo., thence over US Highway 36 via Macon, Mo., to Pittsfield, and return over the same route.

Route 5 — Between Springfield, Ill., and Chicago, Ill., serving the intermediate point of Bloomington, Ill., the off-route point of Joliet, Ill., and all points in the Chicago, Ill., Commercial Zone as defined by the Commission:

From Springfield over US Highway 66 via Lincoln, Bloomington, Normal, Chenoa, Pontiac, and Dwight, Ill., to Gardner, Ill., thence over US Highway Alternate 66 (old US Highway 66) via Wilmington and Joliet, Ill., to junction US Highway 66, thence over US Highway 66 to Chicago, and return over the same route.

Route 6 — Between Kansas City, Mo., and Cameron, Mo., serving the intermediate point of St. Joseph, Mo., but with no service authorized at Cameron, Mo.:

From Kansas City over US Highway Alternate 169 to junction US Highway 169, thence over US Highway 169 to St. Joseph, Mo., thence over US Highway 36 to Cameron, and return over the same route.

Route 7 — Between Kansas City, Mo., and Chenoa, Ill., serving the intermediate point of Peoria, Ill., and the off-route point of Pekin, Ill., but with no service authorized at Chenoa, Ill.:

From Kansas City over US Highway 24 to Lewistown, Ill., thence over Illinois Highway 100 (old US Highway 24) to junction Illinois Highway 78, thence over Illinois Highway 78 (old US Highway 24) to Canton, Ill., thence over Illinois Highway 9 (old US Highway 24) to junction US highway 24 at Banner, Ill., thence over US Highway 24 via Peoria, Ill., to Chenoa, and return over the same route.

Route 8 — Between Indianapolis, Ind., and Cincinnati, Ohio, serving no intermediate points:

From Indianapolis over US Highway 52 to Cincinnati, and return over the same route.

Route 9 — Between Kansas City, Mo., and Cincinnati, Ohio, serving the intermediate points of Sedalia and St. Louis, Mo., East St. Louis, Ill., and Lawrenceburg, Ind.:

From Kansas City over US Highway 50 via Seymour, Ind., to Cincinnati, and return over the same route.

Route 10 — Between Harrisburg, Pa., and Philadelphia, Pa., serving no intermediate points:

From Harrisburg over US Highway 230 to Lancaster, Pa., thence over US Highway 30 to Philadelphia, and return over the same route.

Route 11 — Between Kansas City, Mo., and Omaha, Nebr., serving the intermediate points of St. Joseph and Rockport, Mo., and Council Bluffs, Iowa, and the off-route point of South Omaha, Nebr.:

From Kansas City over US Highway 71 to junction US Highway City 71, near Faucett, Mo., thence over US Highway City 71 to St. Joseph, Mo., thence over US Highway 71 to junction US Highway 275 near Savannah, Mo., thence over US Highway 275 via Glenwood, Iowa to junction Iowa Highway 375, thence over Iowa Highway 375 to Council Bluffs, Iowa, thence over US Highway 6 to Omaha, and return over the same route.

Route 12 — Between Glenwood, Iowa, and Peoria, Ill., serving no intermediate points, and with no service authorized at Glenwood, Iowa:

From Glenwood over US Highway 34 to Galesburg, Ill., thence over US Highway 150 to Peoria, and return over the same route.

Route 13 — Between Chenoa, Ill., and Gilman, Ill., serving no intermediate points, and with no service authorized at termini:

From Chenoa over US Highway 24 to Gilman, and return over the same route.

Route 14 — Between Van Wert, Ohio, and Lodi, Ohio, serving no intermediate points, and with no service authorized at termini:

From Van Wert over US Highway 224 to Lodi, and return over the same route.

Route 15 — Between Council Bluffs, Iowa, and Chicago, Ill., serving the intermediate points of Des Moines and Devenport, Iowa, and all points in the Chicago, Ill., Commercial Zone as defined by the Commission:

From Council Bluffs over US Highway 6 to Princeton, Ill., thence over US Highway 34 to Oswego, Ill., thence over Illinois Highway 31 (old US Highway 34) to Aurora, Ill., thence over Illinois Highway 65 (old US Highway 34) to junction US Highway 34, thence over US Highway 34 to Chicago, return over the same route.

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Route 16 — Between Chicago, Ill., and Cleveland, Ohio, serving the intermediate point of Toledo, Ohio, and all points in the Chicago, Ill., Commercial Zone as defined by the Commission:

From Chicago over US Highway 20 to junction Ohio Highway 120 near Toledo, Ohio, thence over Ohio Highway 120 to Toledo, Ohio, thence over US Highway 23 to junction US Highway 6, thence over US Highway 6 to Vermilion, Ohio, thence over Ohio Highway 60 to Birmingham, Ohio, thence over Ohio Highway 113 to Elyria, Ohio, thence over Ohio Highway 57 to junction Ohio Highway 254, thence over Ohio Highway 254 to Cleveland, and return over the same route.

Route 17 — Between Chicago, Ill., and Fort Wayne, Ind., serving all points in the Chicago, Ill., Commercial Zone as defined by the Commission:

From Chicago over US Highway 41 to junction US Highway 30 near Dyer, Ind., thence over US Highway 30 to Fort Wayne, and return over the same route.

Route 18 — Between Lodi, Ohio, and Ebensburg, Pa., serving the intermediate point of Akron, Ohio, but with no service authorized at termini:

From Lodi over US Highway 244 to New Castle, Pa., thence over US Highway 422 to Ebensburg, and return over the same route.

Route 19 — Between Philadelphia, Pa., and Newark, N. J., serving the intermediate points of Elizabeth and Trenton, N. J., and the off-route points of Jersey City, Passaic, and Hoboken, N. J., with service over this route and at the intermediate and off-route points subject to the condition that no service is authorized between Philadelphia, Pa., and New York, N. Y., or between

Elizabeth, Trenton, Newark, Jersey City, and Passiac, N. J., on the one hand, and, on the other, Philadelphia, Pa., and New York, N. Y.:

From Philadelphia over US Highway 1 to Newark, and return over the same route.

Route 20 — Between Chicago, Ill., and junction US Highway 41 and 30 near Dyer, Ind., serving no intermediate points, and with no service authorized at junction US Highways 41 and 30:

From Chicago over US Highway Alternate 30 to junction US Highway 30, thence over US Highway 30 to junction US Highway 41, and return over the same route.

Route 21 — Between Mansfield, Ohio, and Lancaster, Pa., serving the intermediate point of Pittsburgh, Pa., but with no service at Lancaster, Pa.:

From Mansfield over US Highway 30 to Lancaster, and return over the same route.

Route 22 — Between Albany, N. Y., and Boston, Mass., serving the intermediate point of Springfield, Mass., with service over this route subject to the condition that no service is authorized between Boston, Mass., on the one hand, and, on the other, New York, N. Y., Jersey City, Newark, Elizabeth, Passaic, and Trenton, N. J., and Philadelphia, Pa.:

From Albany over US Highway 20 via Lenox, Mass. to Boston and return over the same route.

Route 23 — Between Louisville, Ky., and Indianapolis, Ind., serving no intermediate points:

From Louisville over US Highway 31-E to junction US Highway 31 at Sellersburg, Ind., thence over US Highway 31 to junction US Highway 50, thence over US Highway 50 to

Seymour, Ind., thence over US Highway Alternate 31 (formerly US Highway 31) via Rockford, Walesboro, and Columbus, Ind., to junction US Highway 31, thence over US Highway 31 to junction unnumbered highway, south of Edinburg, Ind., thence over said unnumbered highway (formerly US Highway 31) via Edinburg, to junction US Highway 31, north of Edinburg, thence over US Highway 31 to junction Indiana Highway 431, near Greenwood, Ind., thence over Indiana Highway 431 (formerly US Highway 31) via Greenwood to Indianapolis, and return over the same route.

Service is authorized over any combination of Routes #1 to #23, inclusive, regardless of whether the routes joined have a common point of service.

Route 24 — Between Irwin, Pa., toll gate at the junction of US Highway 30 and Pennsylvania Turnpike, and Harrisburg, Pa., as an alternate route, serving no intermediate points:

From Irwin toll gate over Pennsylvania Turnpike to the Middlesex, Pa., toll gate, thence over US Highway 11 to Harrisburg, and return over the same route.

Route 25 — Between Decatur, Ill., and Indianapolis, Ind., serving no intermediate points, and with no service authorized at Decatur, Ill.:

From Decatur over US Highway 36 to Indianapolis, and return over the same route.

Route 26 — Between Shoals, Ind., and Louisville, Ky., serving no intermediate points, and with no service authorized at Shoals, Ind.:

From Shoals over US Highway 150 to Louisville, and return over the same route.

Route 27 — Between Indianapolis, Ind., and junction US Highway 52 and 24, at or near Kentland, Ind., serving no intermediate points, and with no service authorized at junction US Highways 52 and 24:

From Indianapolis over US Highway 52 via Lebanon, Ind., to junction US Highway 24, and return over the same route.

Route 28 — Between Cincinnati, Ohio, and Zanesville, Ohio, serving no intermediate points, and with no service authorized at Zanesville, Ohio:

From Cincinnati over US Highway 22 to Zanesville, and return over the same route.

Route 29 — Between Fort Wayne, Ind., and Toledo, Ohio, serving no intermediate points, and with no service authorized over this route between Toledo, Ohio, on the one hand, and, on the other, points east of the Illinois-Indiana State Line:

From Fort Wayne over US Highway 24 to Toledo, and return over the same route.

Route 30 — Between Cleveland, Ohio, and Deerfield, Ohio, serving no intermediate points, and with no service authorized at Deerfield, Ohio:

From Cleveland over Ohio Highway 14 to Deerfield, and return over the same route.

Route 31 — Between New York, N. Y., and Springfield, Mass., serving no intermediate points, and with service over this route subject to the condition that no service is authorized between Boston, Mass., on the one hand, and, on the other, New York, N. Y., Jersey City, Newark, Elizabeth, Passaic, and Trenton, N. J., and Philadelphia, Pa.:

From New York over US Highway 1 to Noroton, Conn., thence over US Highway Alternate 1 (formerly US Highway 1) via Darien, Conn., to junction US Highway 1, north of Darien, thence over US Highway 1 via Westport and Bridgeport, Conn.,

to New Haven, Conn., thence over US Highway 5 to Springfield, and return over the same route.

Route 32 Between New Haven, Conn., and Boston, Mass., serving no intermediate points, and with service at New Haven for the purpose of joinder only; service over this route subject to the condition that no service is authorized between Boston, Mass., on the one hand, and, on the other, New York, N. Y., Jersey City, Newark, Elizabeth, Passaic, and Trenton, N. J., and Philadelphia, Pa.:

From New Haven over US Highway 1 to Boston, and return over the same route.

Service is authorized over any combination of Routes 25 to 31, inclusive, with carrier's authorized regular routes, regardless of whether the routes joined have a common authorized point of service.

General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Route 33 Between Pittsburgh, Pa., and Detroit, Mich., serving the intermediate points of Zanesville, Toledo, and Columbus, Ohio, and the off-route points of Lancaster, Dayton, and Springfield, Ohio:

From Pittsburgh over US Highway 22 to Zanesville, Ohio, thence over US Highway 40 to Columbus, Ohio, thence over US Highway 33 to Marysville, Ohio, thence over Ohio Highway 31 to Kenton, Ohio, thence over US Highway 68 to Toledo, Ohio, thence over US Highway 24 to Detroit, and return over the same route.

Route 34 Between Charleston, W. Va., and Nitro, W. Va., serving all intermediate points:

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From Charleston over US Highway 35 to Nitro, and return over the same route.

Route 35 — Between Charleston, W. Va., and Huntington, W. Va., serving all intermediate points, and off-route points of Owens, Ceredo, and Kenova, W. Va.:

From Charleston over US Highway 60 to Huntington, and return over the same route.

Route 36 — Between Clarksburg, W. Va., and Marietta, Ohio, serving all intermediate points, and off-route points of Harrisville, Big Springs, Washburn, Mahone, Mount Zion, Grantsville, Cairo, and Smithville, W. Va.:

From Clarksburg over US Highway 50 to Parkersburg, W. Va., thence over US Highway 21 to Marietta, and return over the same route.

Route 37 — Between Clarksburg, W. Va., and Marietta, Ohio, serving all intermediate points, and the same off-route points as in Route #36 above:

From Clarksburg over US Highway 50 to Belpre, Ohio, thence over Ohio Highway 7 to Marietta, and return over the same route.

Route 38 — Between Clarksburg, W. Va., and Charleston, W. Va., serving all intermediate points, and off-route points of Sand Fork, Lost Creek, Burnsville, West Milford, Gilmer Station, McWhorter, Clay, and Crawford, W. Va.:

From Clarksburg over US Highway 19 to Weston, W. Va., thence over US Highway 119 via Clendenin, W. Va., to Charleston, and return over the same route.

Route 39 — Between Clarksburg, W. Va., and Charleston, W. Va., serving all intermediate points, and the same off-route points as in Route #38 above:

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From Clarksburg over US Highway 19 to Sutton, W. Va., thence over West Virginia Highway 4 to Clendenin, W. Va., thence over US Highway 119 to Charleston, and return over the same route.

Route 40 — Between Clarksburg, W. Va., and Pittsburgh, Pa., serving all intermediate points, and off-route points of Caraopolis, and McKees Rocks, Pa.:

From Clarksburg over US Highway 19 to junction Bethel Road, thence over Bethel Road to junction Pennsylvania Highway 88, thence over Pennsylvania Highway 88 to Overbrook, Pa., thence over Pennsylvania Highway 51 to Pittsburgh, and return over the same route.

Route 41 — Between Morgantown, W. Va., and Pittsburgh, Pa., serving all intermediate points:

From Morgantown over US Highway 119 to Uniontown, Pa., thence over Pennsylvania Highway 51 to junction Pennsylvania Highway 711, thence over Pennsylvania Highway 711 to Fayette City, Pa., thence over Pennsylvania Highway 906 via Milesville and Elizabeth, Pa., to East McKeesport, Pa., thence over US Highway 30 to Pittsburgh, and return over the same route.

Route 42 — Between Morgantown, W. Va., and Pittsburgh, Pa., serving all intermediate points:

From Morgantown to Milesville, Pa., as specified in Route #41, thence over Pennsylvania Highway 31 to junction Pennsylvania Highway 51, thence over Pennsylvania Highway 51 to Elizabeth, Pa., thence across the Monogahela River to West Elizabeth, Pa., thence over Pennsylvania Highway 837 to Pittsburgh, and return over the same route.

Route 43 — Between Uniontown, Pa., and Greensburg, Pa., serving all intermediate points:

From Uniontown over US Highway 119 to Greensburg, and return over the same route.

Route 44 — Between Clarksburg, W. Va., and Wheeling, W. Va., serving all intermediate points, and off-route points of Grant Town, Brady, Dakota, Lumberport, Fairview, Star City, Lowsville, Everettville, Booth, Arnettsville, Pursglove, National, and Carolina, W. Va.:

From Clarksburg over US Highway 19 to Fairmont, W. Va., thence over US Highway 250 to Wheeling, and return over the same route.

Route 45 — Between Clarksburg, W. Va., and Wheeling, W. Va., serving all intermediate points, and the same off-route points as in Route #44 above:

From Clarksburg over US Highway 19 to junction West Virginia Highway 7, thence over West Virginia Highway 7 to Blacksville, W. Va., thence over West Virginia Highway 218 to the West Virginia-Pennsylvania State Line, thence over Pennsylvania Highway 218 to Waynesburg, Pa., thence over US Highway 19 to Washington, Pa., thence over US Highway 40 to Wheeling, and return over the same route.

Route 46 — Between Clarksburg, W. Va., and French Creek, W. Va., serving all intermediate points:

From Clarksburg over West Virginia Highway 20 to French Creek and return over the same route.

Route 47 — Between Clarksburg, W. Va., and Elkins, W. Va., serving all intermediate points, and off-route points of Volga, Coalton, Century, Norton, and Meriden, W. Va.:

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From Clarksburg over West Virginia Highway 20 to Hodgesville W. Va., thence over US Highway 119 to Philippi, W. Va., then over US Highway 250 to Elkins, and return over the same route.

Route 48 Between Clarksburg, W. Va., and Grafton, W. Va., serving all intermediate points, and off-route points of Brownton and Wendel, W. Va.:

From Clarksburg over US Highway 50 to junction West Virginia Highway 77, thence over West Virginia Highway 77 to junction US Highway 250, thence over US Highway 250 to Philippi, W. Va., thence return over US Highway 250 via Webster to Grafton, and return over the same route.

Route 49 Between Clarksburg, W. Va., and Kingwood, W. Va., serving all intermediate points, and off-route points of Newburg, Independence, and Camp Dawson, W. Va.:

From Clarksburg over US Highway 50 to Fellowsville, W. Va., thence over West Virginia Highway 26 to Kingwood, and return over the same route.

Route 50 Between Clarksburg, W. Va., and Kingwood, W. Va., serving all intermediate points, and the same off route points as in Route #49 above:

From Clarksburg to Fellowsville, W. Va., as specified above, thence over West Virginia Highway 26 to Junction unnumbered highway, thence over unnumbered highway to Kingwood, and return over the same route.

Route 51 Between Morgantown, W. Va., and Redhouse, Md., serving all intermediate points, and off-route points of Deer Park and Mountain Lake Park, Md.:

From Morgantown over West Virginia Highway 7 to the West Virginia-Maryland State Line, thence over Maryland Highway

39 to Oakland, Md., thence over US Highway 219 to Redhouse, and return over the same route.

Route 52 — Between Newcreek, W. Va., and Cumberland, Md., serving all intermediate points, and the off-route point of Piedmont, W. Va.:

From Newcreek over US Highway 220 to Cumberland, and return over the same route.

Route 53 — Between Pittsburgh, Pa., and Charleston, W. Va., serving all intermediate points, and off-route points of Ravenswood and Elizabeth, W. Va., and points on West Virginia Highway 2 between Weirton and Wheeling, W. Va.:

From Pittsburgh over US Highway 19 to Washington, Pa., thence over US Highway 40 to Wheeling, W. Va., thence over West Virginia Highway 2 to Parkersburg, W. Va., thence over US Highway 21 to Charleston, and return over the same route.

Route 54 — Between Charleston, W. Va., and Baltimore, Md., serving all intermediate points in West Virginia, and those on US Highway 50 between Winchester, Va., and the Virginia-West Virginia State line, and off-route points of Ronceverte, Montgomery, Cabin Creek, Rowlesburg, Elk Garden, Blaine, and Manheim, W. Va., without restriction: The intermediate points of Winchester, Lexington, and Rosslyn, Va., those on US Highway 60 between Lexington and the Virginia-West Virginia State line, and those on US Highway 11 between Lexington and Winchester, restricted to traffic other than that moving to or from points in Maryland, Virginia, and the District of Columbia; the off-route points of Luray and Alexandria, Va., restricted to traffic other than that moving to or from Washington, D. C.; the intermediate point of Washington, D. C., restricted to traffic other than that moving to or from points in Maryland and Virginia; and the

intermediate points of Beltsville, College Park, and Hyattsville, Md., restricted to traffic other than that moving to or from points in Maryland, Virginia, and the District of Columbia:

From Charleston over US Highway 60 to Lexington, Va., thence over US Highway 11 to Winchester, Va., thence over US Highway 50 to Washington, D. C., thence over US Highway 1 to Baltimore, and return over the same route.

Route 55 — Between Clarksburg, W. Va., and Baltimore, Md., serving the same intermediate and off-route points and with the same restrictions as in Route #54 above:

From Clarksburg over US Highway 50 to Washington, D. C., thence over US Highway 1 to Baltimore, and return over the same route.

Route 56 — Between Hagerstown, Md., and Winchester, Va., serving no intermediate points, and with no service authorized between termini:

From Hagerstown over US Highway 11 to Winchester, and return over the same route.

Route 57 — Between Martinsburg, W. Va., and Charles Town, W. Va., serving no intermediate points, and with no service authorized between termini:

From Martinsburg over West Virginia Highway 9 to Charles Town, and return over the same route.

Route 58 — Between Pittsburgh, Pa., and Baltimore, Md., serving the intermediate and off-route points of Greenburg, Jeannette, Monessen, Fayette City, Charleroi, and McKeesport, Pa.:

From Pittsburgh over US Highway 30 to McConnellsburg, Pa., thence over Pennsylvania Highway 16 to the Pennsylvania-Maryland State line, thence over Maryland Highway 32 to

Westminster, Md., thence over US Highway 140 to Baltimore, and return over the same route.

Route 59 — Between Wheeling, W. Va., and Washington, D. C., serving all intermediate points, and off-route points of Bellaire, Martins, Ferry, Yorkville, and Steubenville, Ohio, without restriction; service at Washington, D. C., restricted to traffic moving to or from points other than those in Maryland:

From Wheeling over US Highway 40 to Frederick, Md., thence over US Highway 240 to Washington, D. C., and return over the same route.

Route 60 — Between Winchester, Va., and Baltimore, Md., serving all intermediate points restricted to traffic moving to or from points in West Virginia, Ohio, or Pennsylvania; but with no service authorized between termini:

From Winchester over US Highway 340 to Frederick, Md., thence over US Highway 40 to Baltimore, and return over the same route.

Route 61 — Between Luray, Va., and Washington, D. C., serving no intermediate points, and with no service authorized between termini:

From Luray, Va. over US Highway 211 to Washington, D. C., and return over the same route.

Route 62 — Between Pike, W. Va., and Marietta, Ohio, serving no intermediate points:

From Pike over US Highway Alternate 50 to Marietta, and return over the same route.

Route 63 — Between Grafton, W. Va., and Morgantown, W. Va., serving no intermediate points:

From Grafton over US Highway 119 to Morgantown, and return over the same route.

Glass, glass moulds, and materials and supplies used or useful in the operation of glass manufacture.

Route 64 — Between Pittsburgh, Pa., and Ford City, Pa., serving the intermediate points of Creighton and Brackenridge, Pa.:

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From Pittsburgh over Pennsylvania Highway 28 to junction Pennsylvania Highway 128, near Freeport, Pa., thence over Pennsylvania Highway 128 to Ford City, and return over the same route.

Route 65 Between Greensburg, Pa., and Brackenridge, Pa., serving no intermediate points:

From Greensburg over Pennsylvania Highway 66 to junction Pennsylvania Highway 366, near Mamont, Pa., thence over Pennsylvania Highway 366 to New Kensington, Pa., thence across the Allegheny River to junction Pennsylvania Highway 28, thence over Pennsylvania Highway 28 to Brackenridge, and return over the same route.

IRREGULAR ROUTES:

Granite,

From Fairfax, Kans., to points in Iowa, Illinois, Indiana, Ohio, New York, New Jersey, and Pennsylvania, with no transportation for compensation on return except as otherwise authorized.

Fish and oysters,

From Norwalk and South Norwalk, Conn., and from Gloucester, Mass., to Kansas City and St. Louis, Mo., and Chicago, Ill., with no transportation for compensation on return except as otherwise authorized.

Dairy products, dressed poultry, and dressed rabbits,

From Omaha and Falls City, Nebr., Council Bluffs, Harlan, and Des Moines, Iowa, Chicago, Ill., points in Missouri on the south of US Highway 24 and on and west of US Highway 65, and points in Kansas on, east, and north of a line beginning at the Kansas-Nebraska State line and extending along US Highway 77 to Riley, Kans., thence along US Highway 24 to Topeka, Kans., thence

along US Highway 75 to Yates Center, Kans., and thence along US Highway 54 to the Kansas-Missouri State line, to Louisville, Ky., and points in Illinois, Ohio, Pennsylvania, New York, New Jersey, and Massachusetts on Routes #1 to #23, inclusive, specified above, except to the extent that such commodities may be transported from and to the points involved over said regular routes, with no transportation for compensation on return except as otherwise authorized.

Catalogs, and printed matter, in truckload lots,

From Clarksburg, Charles Town, and Bluefield, W. Va., to points in West Virginia, with no transportation for compensation on return except as otherwise authorized.

Electrical supplies, in truckload lots,

Between Washington, D. C., on the one hand, and, on the other, points in West Virginia.

Any repetition of the authority granted herein and to the extent it duplicates any authority heretofore granted to or now held by carrier shall not be construed as conferring more than one operating right.

*This certificate embraces the operating rights granted the above-named carrier in certificate bearing the same number (MC 200 Sub 46) issued February 21, 1950, and also embraces the operating rights authorized in report and order of the Commission entered in MC 200 Sub 46 on December 1, 1952. Corrected certificate issued September 29, 1954, to correctly set forth service clause on Routes #25 to 31, inclusive, and to make changes in route description due to changes in some highway numbers.

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CERTIFICATE NO. MC 200 SUB 88

Effective March 21, 1949.

General Commodities, except livestock, over a regular route.

Between Amarillo, Texas, and the site of the US Helium Plant at Soncy, Tex.:

From Amarillo over US Highway 66 to the site of the US Helium Plant at Soncy, Tex., and return over the same route.

Service is not authorized to or from intermediate points.

CERTIFICATE NO MC 200 SUB 90

Effective November 4, 1949.

General commodities, including dangerous explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, but excluding livestock, over regular routes.

Between Oklahoma City, Okla., and Denver, Colo.:

From Oklahoma City over Okla. Highway 3, to junction US Highway 81, thence over US Highway 81 to Kingfisher, Okla., thence over Oklahoma Highway 33 to junction US Highway 270, thence over US Highway 270 to junction US Highway 183, thence over US Highway 183 to Buffalo, Okla., thence over US Highway 64 to junction US Highway 83, thence over US Highway 83 to Garden City, Kans., thence over US Highway 50 to junction US Highway 287, and thence over US Highway 287 to Denver, and return over the same route.

Service is not authorized to or from the termini or intermediate points, except as otherwise authorized.

Between Joplin, Mo., and Springfield, Mo., (as an alternate route for operating convenience only in connection with said carrier's presently authorized route between Oklahoma City, Okla., and Chicago, Ill.):

From Joplin over US Highway 166 to Springfield, and return over same route.

Service is not authorized to or from intermediate points.

General commodities, including dangerous explosives, but excluding livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, as alternate route for operating convenience only, in connection with said carrier's presently authorized regular-route operations between Topeka and Tulsa,

Between Topeka, Kansas, and Tulsa, Okla.:

From Topeka over US Highway 75 to Tulsa, and return over the same route.

Service is not authorized to or from the termini or the intermediate points.

CERTIFICATE NO. MC 200 SUB 94

Effective September 14, 1949.

Dangerous explosives, and military ordnance stores, moving on Government Bills of Lading, over a regular route.

Between Fort Riley, Kans., and Grand Island, Nebr.:

From Fort Riley, over US Highway 40 to Junction City, Kans., thence over US Highway 77 to Riley, Kans., thence over US Highway 24 to junction US Highway 81, thence over US Highway 81 to junction US Highway 34, thence over US Highway 34 to junction US Highway 281 and thence over US Highway 281 to Grand Island, and return over the same route.

Service is not authorized to or from intermediate points.

RESTRICTION: The operations authorized herein shall conform with the plan of operation approved by the Commission in its supplemental report dated January 31, 1949, in Performance of Motor Com. Car. Service by Riss & Co., Inc., 49 M. C. C. 111.

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CERTIFICATE NO. MC 200 SUB 95

Effective October 12, 1950.

General commodities, except dangerous explosives, articles of unusual value, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment.

Service is authorized to and from Garland, Texas, as an off-route point in connection with said carrier's otherwise authorized regular route operations from and to Dallas, Texas.

CERTIFICATE NO. MC 200 SUB 96

Effective February 14, 1950.

General commodities, except those of unusual value, and except dangerous explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over irregular routes.

Service is authorized to and from points in the Detroit, Michigan Commercial Zone as defined by the Commission, as intermediate and off-route points in connection with said carrier's presently authorized regular-route operation to and from Detroit.

CERTIFICATE NO. MC 200 SUB 102.

Effective February 14, 1950.

Service is authorized to and from points within 12 miles of the central post office, Des Moines, Iowa, except Altoona, Ankeny, Carlisle, Des Moines, and Norwalk, Iowa, as intermediate and off-route points in connection with said carrier's presently authorized regular-route operations to and from Des Moines, restricted to the transportation of such commodities as said carrier is presently authorized to transport to and from Des Moines over regular routes, and subject to the same conditions, limitation, and restrictions, if any, contained in the said

carrier's present operating authority with respect to service to and from Des Moines.

The authority granted herein to the extent it duplicates any authority heretofore granted to or now held by said carrier, shall not be construed as granting more than one operating right.

CERTIFICATE NO. MC 200 SUB 103*

Effective August 31, 1949.

General commodities, except those of unusual value, and except livestock, dangerous explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over regular routes.

Between points in Texas as follows:

From Dallas over US Highway 75 to Denison.

Service is authorized to and from the intermediate points of McKinney and Sherman.

From Dallas over Texas Highway 114 to Grapevine, thence over Texas Highway 121 to Fort Worth.

Service is not authorized to or from intermediate points.

Return over these routes.

General commodities, except those of unusual value, and except livestock, dangerous explosives, commodities in bulk, and commodities exceeding ordinary equipment and loading facilities, over irregular routes.

Between Denison, Tex., and Colbert, Okla., on the one hand, and, on the other, the Denison Dam Site in Texas and Oklahoma, and Cartwright, Okla.

*This certificate embraces that portion of the operating rights in Certificate No. MC 30250, purchased by Riss & Co., Inc., pursuant to MC-F-4008, and assigned Docket No. MC 200 Sub 103.

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CERTIFICATE NO. MC 200 SUB 104

Effective January 19, 1950.

General commodities, except livestock, over an alternate regular route for operating convenience only, in connection with said carrier's presently authorized regular route operation.

Between junction US Highway 69 and Kansas Highway 26, and junction US Highway 66 and Kansas Highway 26:

From junction US Highway 69 and Kansas Highway 26, at Crestline, Kansas, over Kansas Highway 26 to junction US Highway 66, (approximately one mile east of Riverton, Kansas), and return over the same route.

Service is not authorized to or from intermediate points.

CERTIFICATE NO. MC 200 SUB 105

Effective July 26, 1950.

General commodities, except those of unusual value, and except dangerous explosives, household goods as defined by the Commission, commodities requiring special equipment, and those injurious or contaminating to other lading, over an alternate regular route for operating convenience only.

Between Toledo, Ohio, and the junction of US Highway 24 and 25:

From Toledo over US Highway 25 to junction with US Highway 24, approximately five miles north of Monroe, Mich., and return over the same route.

Service is not authorized to or from intermediate points, but service is authorized at the junction of US Highway 24 and 25 for joinder of routes only.

CERTIFICATE NO. MC 200 SUB 106

Effective October 12, 1950.

General Commodities, except livestock, over an alternate route for operating convenience only in connection with said carrier's otherwise authorized regular route operations.

Between Miami, Okla., and Joplin, Mo.:

From Miami over Oklahoma Highway 10 to junction with Ottawa County, Oklahoma, Farm-To-Market-Highway, thence over Ottawa County, Okla., Farm-To-Market-Highway to the Missouri-Oklahoma State line, thence over Newton County, Mo., Highway U to junction with Missouri Highway 43, thence over Missouri Highway 43 to Joplin and return over the same route.

Service is not authorized to or from intermediate points.

CERTIFICATE NO. MC 200 SUB 107

Effective April 27, 1951.

General commodities, except those of unusual value, and except livestock, dangerous explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over an alternate route, for operating convenience only in connection with carrier's existing regular route operations authorized in MC 200 and MC 200 Sub 103.

Between Ardmore, Okla., and Dallas, Tex.:

From Ardmore over US Highway 77 to Dallas, and return over the same route.

Service is not authorized to or from intermediate points.

CERTIFICATE NO. MC 200 SUB 109

Effective January 26, 1951.

General commodities, except livestock, over a regular route,

Between junction US Highway 85 and Colorado Highway 393 and junction US Highway 85 and Colorado Highway 105:

From junction US Highway 85 and Colorado Highway 393 over relocated US Highway 85 to junction US Highway 85 and Colorado Highway 105.

Service is not authorized to or from intermediate points but service is authorized to and from the off-route points of Larkspur, Greenland, Palmer Lake, and Monument, Colo.

The authority herein authorized to the extent it duplicates any heretofore granted to said carrier shall not be construed as conferring more than one operating right.

CERTIFICATE NO. MC 200 SUB 110*

Effective November 14, 1950.

General commodities, except those of unusual value, and except dangerous explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over a regular route.

Between Osage City, Kans., and Topeka, Kans.:

From Osage City over Kans. Highway 31 to junction US Highway 50-N, thence over US Highway 50-N via Burlingame, Kans., to junction US Highway 75, and thence over US Highway 75 to Topeka, and return over the same route.

Service is authorized to and from the intermediate points of Burlingame, Pauline, Scranton, and Carbondale, Kansas.

*This certificate embraces the operating rights in Certificate No. MC 84025 purchased by Riss & Company, Inc., pursuant to MC-F-4590, and assigned No. MC 200 Sub 110.

CERTIFICATE NO. MC 200 SUB 112.

Effective April 23, 1951.

General commodities, except livestock over an alternate route, for operating convenience only, in connection with carrier's presently authorized regular route operations to and from Kansas City, Mo.

Between junction US Highway 24 and US Highway 40 near Lawrence, Kansas and junction US Highway 24 and US Highway 40 near Topeka, Kansas:

From Junction US Highway 24 and 40 near Lawrence, over US Highway 24 to junction US Highway 40 near Topeka, and return over the same route.

Service is not authorized to or from intermediate points.

CERTIFICATE NO. MC 200 SUB 114

Effective November 19, 1951.

General commodities, except those of unusual value, and except livestock, dangerous explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment.

Service is authorized at points in the Dallas, Texas Commercial Zone, as defined by the Commission in 46 M. C. C. 665, as intermediate or off-route points in connection with carrier's otherwise authorized regular-route operations to and from Dallas.

CERTIFICATE NO. MC 200 SUB 116.

Effective August 14, 1951.

General commodities, except those of unusual value, livestock, dangerous explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment.

Service is authorized to and from points in the Fort Worth, Tex., Commercial Zone, as defined by the Commission, as intermediate or off-route points in connection with carrier's authorized regular-route operations to and from Fort Worth, Texas.

CERTIFICATE NO. MC 200 SUB 122.

Effective February 21, 1952.

General commodities, except livestock,

Service is authorized to and from points in the Amarillo, Tex., Commercial Zone as defined in 46 M. C. C. 665, as intermediate and off-route points in connection with carrier's presently authorized regular route operations to and from Amarillo, Tex.

CERTIFICATE NO. MC 200 SUB 123.

Effective July 22, 1952.

General commodities, except livestock,

Service is authorized to and from points in the Tulsa, Okla., Commercial Zone as defined by the Commission, except Tulsa, as intermediate or off-route points in connection with authorized regular route operations held by carrier on February 25, 1952, to and from Tulsa, Oklahoma.

CERTIFICATE NO. MC 200 SUB 124.

Effective June 17, 1952.

General commodities, except livestock, and petroleum products, in bulk, in tank vehicles,

Service is authorized to and from the site of the US Atomic Energy Plant, at or near Marshall, Colo., as an off-route point in connection with regular route operations held by carrier on March 31, 1952, to and from Denver, Colorado.

CERTIFICATE NO. MC 200 SUB 127.

Effective February 14, 1952.

General commodities, except those of unusual value, dangerous explosives household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,

Service is authorized to and from the site of the Packard Motor Car Company's Parts Service Division Plant and Jet Motor Division Plant, located approximately two miles northwest of Utica, Mich. in connection with carrier's regular-route operation to and from Detroit and the Detroit, Mich., Commercial Zone.

CERTIFICATE NO. MC 200 SUB 128.

Effective March 20, 1952.

General commodities, except livestock, over an alternate route for operating

convenience only, in connection with carrier's presently authorized regular-route operation between Tulsa, Okla., and Denver, Colo., via Oklahoma City, Oklahoma,

Between Tulsa, Okla., and Buffalo, Okla.:

From Tulsa over US Highway 64 to Buffalo, and return over the same route.

Service is not authorized to or from intermediate points.

Service at Buffalo is authorized for the purpose of joinder only.

CERTIFICATE NO. MC 200 SUB 132.

Effective July 9, 1952.

General commodities, except those of unusual value, Class A and B explosives, livestock, live poultry, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over alternate routes for operating convenience only in connection with carrier's otherwise authorized regular routes between St. Louis, Mo., one the one hand, and, on the other, points in Michigan, Ohio, and New York:

Between Indianapolis, Ind., on the one hand, and, on the other, Huntington, Ind., with services at Huntington for the purpose of joinder only,

From Indianapolis over Indiana Highway 37 to Huntington, and return over the same route.

Between Indianapolis, Ind., on the one hand, and, on the other, Van Wert, Ohio, with service at Van Wert for the purpose of joinder only,

From Indianapolis, Ind., over US Highway 36 to Junction Indiana Highway 67, thence over Indiana Highway 67 to Portland, Ind., thence over US Highway 27 to Decatur, Ind.,

and thence over US Highway 224 to Van Wert, and return over the same route.

CERTIFICATE NO. MC 200 SUB 135.

Effective October 7, 1952.

General commodities, except those of unusual value, Class A and B explosives, live poultry, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over an alternate route for operating convenience only.

Between Washington, Pa., and Ruffs Dale, Pa.:

From Washington over Pennsylvania Highway 31 to Ruffs Dale, and return over the same route.

CERTIFICATE NO. MC 200 SUB 138.

Effective January 6, 1953.

General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, livestock, live poultry, commodities in bulk, and those requiring special equipment, over an alternate route for operating convenience only,

Between Jeffersonville, Ind., on the one hand, and, on the other, Versailles, Ind., with service at Jeffersonville and Versailles for the purpose of joinder only:

From Jeffersonville over Indiana Highway 62 to junction Indiana Highway 107, thence over Indiana Highway 107 to junction US Highway 421, and thence over US Highway 421 to Versailles, and return over the same route.

CERTIFICATE NO. MC 200 SUB 145.

Effective February 15, 1954.

REGULAR ROUTES:

General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities

in bulk, and those requiring special equipment over alternate routes for operating convenience only.

Between Breezewood, Pa., and junction of US Highways 40 and 522, serving no intermediate points; and serving the termini for the purpose of joindor only:

From Breezewood, Pa., and junction of US Highway 126 to junction US Highway 522, thence over US Highway 522 to junction US Highway 40, and return over the same route.

Between Lemoyne, Pa., and Baltimore, Md., serving no intermediate points; and serving the termini for the purpose of joinder only:

From Lemoyne over US Highway 111 to Baltimore, and return over the same route.

RESTRICTION: Service over the above-described alternate routes is restricted against the handling of traffic moving between two points both of which are located east of points in the Pittsburg, Pennsylvania Commercial Zone as defined by the Commission.

CERTIFICATE NO. MC 200 SUB 152.

Effective October 27, 1954.

REGULAR ROUTE:

General commodities, except livestock and Class A and B explosives,

Between Chicago, Ill., and junction US Highways 41 and 6 and Indiana Highway 152, serving all intermediate points on the Calumet-Tri-State Expressway:

From Chicago over the Calumet-Tri-State Expressway to junction Indiana Highway 152, thence over Indiana Highway 152 to junction US Highways 41 and 6, and return over the same route.

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CERTIFICATE NO. MC 200 SUB 153.

Effective May 24, 1954.

REGULAR ROUTE:

General commodities, except those of unusual value, Class A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over an alternate route for operating convenience only,

Between the junction of US Highway 20 and Massachusetts Highway 9, and Boston, Massachusetts serving no intermediate points, and serving the junction of US Highway 20 and Massachusetts Highway 9 for the purpose of joinder only:

From the junction of US Highway 20 and Massachusetts Highway 9, over Massachusetts Highway 9 to Boston, and return over the same route.

CERTIFICATE NO. MC 200 SUB 179*

Effective March 27, 1956

REGULAR ROUTES:

General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commoidities requiring special equipment, and those injurious or contaminating to other lading,

Between Springfield, Mass., and Jersey City, N.J., serving the intermediate points of Bridgeport, New Haven, Hartford, and East Hartford, Conn., and the off-route points of Manchester, New Britain, and Waterbury, Conn., and Holyoke, Mass., restricted to traffic moving between those points, on the one hand, and, on the other, points authorized to be served by carrier in West Virginia and those west of the Pennsylvania-Ohio State Line, as follows:

From Springfield over Alternate US Highway 5 to junction Connecticut Highway 75, thence over Connecticut Highway 75 to junction Connecticut Highway 20, thence over Connecticut Highway 20 to Windsor Locks, Conn., thence over Alternate US Highway 5 to Hartford, Conn., thence over US Highway 5 to New Haven, Conn., thence over US Highway 1 via Norwalk, Conn., to Jersey City, and return over the same route. From Springfield over US Highway 5 to East Hartford, Conn., thence over US Highway 6 to Danbury, Conn., thence over US Highway 7 to Norwalk, Conn., and thence to Jersey City as specified above, and return over the same route.

*This certificate embraces the operating rights in Certificate No. MC 51035 (now superseded and canceled) as modified by order issued October 22, 1954, in MC-F-5255, which operating rights were authorized to be merged with those of the above-named carrier pursuant to MC-F 5255, and Docket No. MC 200 Sub 179 has been assigned thereto.

M-7452

Plaintiff's Exhibit 12
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INTERSTATE COMMERCE COMMISSION

No. MC-200 (Sub-No. 60-TA)

RISS & COMPANY, INC., INTERPRETATION OF

TEMPORARY AUTHORITY

Decided June 2, 1952

Temporary authority in No. MC-200 (Sub-No. 60-TA) construed, and found to authorize the transportation of dangerous explosives only, from, to, between the points, over the routes, and in the manner in which Riss & Company, Inc., is authorized to transport other commodities as specified in its certificate in No. MC-200 (Sub-No. 46). Riss & Company, Inc., found to be conducting operations in excess of such authority. Cease and desist order entered.

Lewyn W. Wickes, James W. Nisbet, Francis J. Steinbrecker, and F. X. Masterson for petitioner.

A. Alvis Layne, Jr., and H. Charles Ephraim for repliant.

REPORT OF THE COMMISSION ON PETITION

BY THE COMMISSION:

By petition, dated February 26, 1952, eastern railroads and class I railroads in western territory, hereafter called petitioners or the railroads, have tendered a petition in which they ask that Riss & Company, Inc., hereafter called Riss, be required to cease and desist from the performance of certain operations which they allege are being conducted beyond the scope of the temporary authority granted to Riss in No. MC-200 (Sub-No. 60-TA). In its reply to the petition, Riss asserts, in part, that the order sought by the railroads is improper relief to be sought by petition, and moves that the pleading be dismissed. We conclude that the petition which, in effect, seeks an interpretation as to the territorial extent of temporary authority granted in No. MC-200 (Sub-No. 60-TA), properly may be considered

under rule 102 of our General Rules of Practice, and it is accepted for filing. The motion to dismiss is overruled. A brief review of the circumstances surrounding the issuance of the temporary authority will aid in understanding the issues raised in the petition and reply.

Riss holds temporary authority in No. MC-200 (Sub-No. 60-TA) to transport "dangerous explosives, to, from, and between points authorized to be served in connection with docket No. MC-30077 and effective subnumbers thereunder." No. MC-30077 was the docket number assigned to the application of Monark Motor Freight System, Inc., hereafter called Monark, filed under the so-called "grandfather" clause, section 206(a) of the Interstate Commerce Act, which, along with the certificates in No. MC-30077 (Sub-No. 3) and No. MC-30077 (Sub-No. 4), was acquired by Riss pursuant to the order of September 28, 1942, in Riss & Co., Inc. - Purchase - Monark M. Freight System, Inc., 38 M. C. C. 563. No. MC-200 (Sub-No. 46) was assigned to the operations so acquired. Monark originally was granted temporary authority in 1942, prior to the transfer of its operating rights to Riss, to transport dangerous explosives to the same extent as that set forth in No. MC-200 (Sub-No. 60-TA). At that time Monark's "grandfather" application in No. MC-30077 was pending, and had not been resolved. It has since been finally determined, and Riss, as successor in interest to Monark, was found entitled to continue certain operations as a common carrier by motor vehicle, of general commodities, except dangerous explosives among other exceptions, between specified points in a number of States, over regular routes, and of specified commodities, from, to, and between described points, over irregular routes. The territorial extent of these operations is far less than the "grandfather" rights claimed by Riss as successor in interest to Monark.

After various appeals to this Commission, as well as certain court action which it is not necessary to recite herein in order to dispose of the issues raised by the petition and reply, a certificate was issued in No. MC-200 (Sub.-No. 46) authorizing such operations, and is now in full force and effect. During

the entire period of adjudication of the claimed "grandfather" rights, and since then, with the exception of a few days, Riss has held continuing temporary authority to transport dangerous explosives to the same extent as set forth in No. MC-200 (Sub-No. 60-TA). The temporary authority is now conditioned to expire upon final determination of the application in No. MC-200 (Sub-No. 84), in which Riss seeks permanent authority to transport dangerous explosives.

The railroads in their petition recite that at the time of the issuance of the temporary authority, the Monark "grandfather" rights had not been determined; that the operating rights so acquired are now the subject of a certificate in No. MC-200 (Sub-No. 46); and that the right to transport dangerous explosives by Riss is limited to serving the same points and in the same manner Riss is authorized by the certificate in No. MC-200 (Sub-No. 46) to transport commodities other than dangerous explosives. The railroads claim that Riss, since the certificate in No. MC-200 (Sub-No. 46) has been in effect, is transporting dangerous explosives to and from points not authorized to be served by the certificate in No. MC-200 (Sub-No. 46), particularly such points as Hingham, Mass., Edgewood, Md., and Radford, Va., to their financial detriment.

In its reply, Riss argues that the temporary authority in No. MC-200 (Sub-No. 60-TA) authorizes it to transport dangerous explosives from, to, and between all points which it claimed to serve as successor in interest to the Monark "grandfather" rights determined in No. MC-200 (Sub-No. 46) as well as between the points which it is authorized to serve by reason of the transfer to it of certain certificates held by Monark in subnumbered proceedings; and that the service which it may perform pursuant to the temporary authority should not contract upon the issuance of a certificate in No. MC-200 (Sub-No. 46), which it terms as unrelated to the need for the transportation of dangerous explosives. Riss contends rather that it may serve all points in the transportation of dangerous explosives which it could serve under the Monark certificates transferred to it, and in addition that it may serve all points which it claimed a

right to serve in the Monark "grandfather" application. Riss urges further that the proper proceeding to test the railroad's claim as to the territorial scope of its temporary authority is in the No. MC-200 (Sub-No. 84) application for permanent authority to transport dangerous explosives, and that the issues raised by the railroads in their petition does not allow consideration by us of the importance of Riss' dangerous explosives operations to the Department of Defense.

At the outset, insofar as Riss succeeded in interest by the order in Riss & Co., Inc. - Purchase - Monark M. Freight System, Inc., supra, to the outstanding certificates issued to Monark, by the terms of its temporary authority and so long as it is in effect, it may transport dangerous explosives to the same extent that it is authorized to transport other commodities by the terms of such certificates. Certificate No. MC-200 (Sub-No. 46) embraces both the authority finally determined in the "grandfather" application and the certificated authority held by Monark and transferred to Riss.

The principal issue before us, however, is whether Riss, under the terms of its temporary authority in No. MC-200 (Sub-No. 60-TA), may provide service on dangerous explosives to the same extent that it claimed operating rights in the Monark "grandfather" application, or whether Riss, since the issuance and effectiveness of certificate No. MC-200 (Sub-No. 46), is authorized to transport dangerous explosives only to the same extent as it may transport other commodities as evidenced by such certificate. In our opinion, the position taken by Riss in its reply is untenable. The temporary authority to transport dangerous explosives is related to the pending permanent application for authority to transport the same commodity, No. MC-200 (Sub-No. 84), only insofar as the expiration date of the temporary authority is concerned, and nothing more. There is no interrelation between the extent of the territory that may be served under the temporary authority and that sought in the permanent application to transport dangerous explosives. The temporary authority, insofar as territorial applicability is concerned, by its very terms, is directly tied to the points authorized to be served in No. MC-30077 (renumbered No. MC-200 (Sub-No. 46). As noted, at the time of the issuance of the original

temporary authority and pending the final determination of the Monark "grandfather" rights, the territory which Riss claimed it might serve exceeded that which Riss finally was found entitled to serve. Points served under color of claimed "grandfather" rights which Riss was later found not entitled to serve by reason of Riss and its predecessor in interest not having conducted bona fide operations on June 1, 1935, and continuously thereafter, are not in any conceivable sense "authorized" points. They merely are points which Riss claimed it had a statutory right to serve, which it was allowed to serve during the various stages leading to the issuance and effectiveness of its No. MC-200 (Sub-No. 46) certificate, and with respect to which its claims were not substantiated.

As it finally has been determined that Riss is not authorized to serve certain points claimed in No. MC-200 (Sub-No. 46) in the transportation of other traffic, it necessarily must follow that it may not serve such points under the temporary authority in question. There has not been any diminution in the points Riss might serve under its temporary authority, but rather there was a resolution, coincidental with the final determination of No. MC-200 (Sub-No. 46), of the points which it is authorized to serve under such temporary authority. Any other conclusion would leave indefinite and uncertain the extent of the temporary authority that Riss has been granted, and would be administratively as well as logically unsound. The appendix herein details the extent of Riss' authority to transport dangerous explosives under No. MC-200 (Sub-No. 60-TA), from, to, and between the same points and in the same manner that it is authorized to transport other commodities as evidenced in certificate No. MC-200 (Sub-No. 46).

We do not consider the allegation that the importance of Riss' service to the Department of Defense has been ignored by the filing of the railroads' petition relevant to the issue herein. The transportation of dangerous explosives by Riss is authorized only to the extent indicated in the appendix. Any other service in the transportation of dangerous explosives is not authorized in No. MC-200 (Sub-No. 60-TA). If there is a need for additional transportation service, it may be met by the filing of further properly supported applications for temporary or

permanent authority. Moreover, the Department of Defense has not intervened herein, although aware of the filing of the railroads' petition.

As seen, petitioners allege that Riss has been performing service in the transportation of dangerous explosives at points not included in the appendix herein. Riss has not denied this allegation, but rather claims and, in effect, holds itself out to transport dangerous explosives to numerous points not embraced in the appendix. We, therefore, shall order a cessation of such unauthorized operations.

We find that the temporary authority issued to Riss & Company, Inc., in No. MC-200 (Sub-No. 60-TA), authorizes temporary operations in interstate or foreign commerce, as a common carrier by motor vehicle, of dangerous explosives from, to, and between the points, and in the manner set forth in the appendix herein. An order will be entered requiring Riss & Company, Inc., to cease and desist from any operations under No. MC-200 (Sub-No. 60-TA) in excess of those set forth in the appendix.

Mahaffie, Commissioner, dissenting:

I would deny the petition. Applicant's temporary authority was by an order dated September 30, 1947, continued so as to expire upon final determination of its application for permanent operating rights in No. MC-200 (Sub-No. 84). No. MC-200 (Sub-No. 84) has been heard at length. In the meantime, extensive operations under the outstanding temporary authority are being conducted. We may find that they should be continued or be curtailed. But until we do on the basis of the record now available to us we should not grant such a petition as this, unless it is required by law. As to the law applicable in the circumstances, I think the provisions of section 9(b) of the Administrative Procedure Act on which the present order is based may still be considered controlling.

I am authorized to say that Commissioners Lee and Knudson join in this dissent.

Commissioner Patterson was necessarily absent and did not participate in the disposition of this proceeding.

APPENDIX

Regular routes:

Dangerous Explosives:

Between Kansas City, Mo., and New York, N. Y.: From Kansas City over U. S. Highway 40 to Kingdom City, Mo., thence over U. S. Highway 54 to its junction with U. S. Highway 36, near Pittsfield, Ill., thence over U. S. Highway 36 through Springfield, Ill., to Decatur, Ill., thence over Illinois Highway 48 to Onarga, Ill., thence over U. S. Highway 45 to Gilman, Ill., thence over U. S. Highway 24 to Fort Wayne, Ind., thence over U. S. Highway 30 through Van Wert, Ohio, to Delphos, Ohio, thence over U. S. Highway 30-N to Mansfield, Ohio, thence over U. S. Highway 42 to Cleveland, Ohio, thence over Ohio Highway 84 to Ashtabula, Ohio, thence over U. S. Highway 20 to its junction with U. S. Highway 62, thence over U. S. Highway 62 to its junction with New York Highway 5, near Buffalo, N. Y., thence over New York Highway 5 to Albany, N. Y., thence over U. S. Highway 9-W to Fort Lee, N. J., and thence across the George Washington Bridge to New York. Service is authorized to and from the intermediate points of Columbia, Mo., Springfield, Ill., Fort Wayne, Ind., Mansfield, Ashland, and Cleveland, Ohio, Erie, Pa., and Fredonia, Buffalo, Geneva, Syracuse, Utica, Schenectady, and Albany, N. Y., and the off-route point of Painesville, Ohio.

Between Albany, N. Y., and New York, N. Y.: From Albany over U. S. Highway 9 to New York. Service is authorized to and from the intermediate point of Yonkers, N. Y.

Between Kingdom City, Mo., and New York, N. Y.: From Kingdom City over U. S. Highway 40 through St. Louis, Mo., and Indianapolis, Ind., to Bridgeport, Ohio, thence over Ohio Highway 7 through

Martins Ferry, Ohio, to its junction with U. S. Highway 22 near Steubenville, Ohio, thence over U. S. Highway 22 through Pittsburgh, Ebensburg, and Harrisburg, Pa., to Newark, N. J., thence over city streets and connecting highways to New York. Service is authorized to and from the intermediate point of St. Louis, Mo., East St. Louis, Ill., Terre Haute, Indianapolis, and Richmond, Ind., Springfield, Columbus, Martins Ferry, and Steubenville, Ohio, Pittsburgh and Harrisburg, Pa., and Newark and Jersey City, N. J., and the off-route points of McKees Rocks, Pa., and Hoboken and Passaic, N. J., with no service to or from Kingdom City.

Between Kansas City, Mo., and Pittsfield, Ill.: From Kansas City over U.S. Highway Alternate 69 to its junction with U. S. Highway 69, thence over U.S. Highway 69 to Cameron, Mo., and thence over U.S. Highway 36 through Macon, Mo., to Pittsfield. Service is authorized to and from the intermediate point of Hannibal, Mo., with no service to or from Pittsfield.

Between Springfield, Ill., and Chicago, Ill.: From Springfield over U.S. Highway 66 through Chenoa, Ill., to Chicago, Ill. Service is authorized to and from the intermediate point of Bloomington, Ill., and the off-route point of Joliet, Ill.

Between Kansas City, Mo., and Cameron, Mo.: From Kansas City over U.S. Highway Alternate 169 to its junction with U.S. Highway 169, thence over U.S. Highway 169 to St. Joseph, Mo., thence over U.S. Highway 36 to Cameron. Service is authorized to and from the intermediate point of St. Joseph, Mo., with no service to or from Cameron.

Between Kansas City, Mo., and Chenoa, Ill.: From Kansas City over U.S. Highway 24 through Peoria, Ill., to Chenoa. Service is authorized to and from the intermediate point of Peoria, Ill., and off-route point of Pekin, Ill., with no service to or from Chenoa.

Between Indianapolis, Ind., and Cincinnati, Ohio: From Indianapolis over U. S. Highway 52 to Cincinnati. Service is not authorized to or from intermediate points.

Between Kansas City, Mo., and Cincinnati, Ohio: From Kansas City over U. S. Highway 50 through Seymour, Ind., to Cincinnati. Service is authorized to and from the intermediate points of Sedalia and St. Louis, Mo., East St. Louis, Ill., and Lawrenceburg, Ind.

Between Harrisburg, Pa., and Philadelphia, Pa.: From Harrisburg over U.S. Highway 230 to Lancaster, Pa., thence over U. S. Highway 30 to Philadelphia. Service is not authorized to or fom intermediate points.

Between Kansas City, Mo., and Omaha, Nebr.: From Kansas City over U.S. Highway 71 to its junction with U.S. Highway 275 near Savannah, Mo., thence over U.S. Highway 275 through Glenwood, Iowa, to junction Iowa Highway 375, thence over Iowa Highway 375 to Council Bluffs, Iowa, thence over U.S. Highway 6 to Omaha. Service is authorized to and from the intermediate points of St. Joseph and Rockport, Mo., and Council Bluffs, Iowa, and the off-route point of South Omaha, Nebr.

Between Glenwood, Iowa, and Peoria, Ill.: From Glenwood over U.S. Highway 34 to Galesburg, Ill., thence over U. S. Highway 150 to Peoria. Service is not authorized to or from intermediate points of Glenwood.

Between Chenoa, Ill., and Gilman, Ill.: From Chenoa over U.S. Highway 24 to Gilman. Service is not authorized to or from the termini or intermediate points.

Between Van Wert, Ohio, and Lodi, Ohio: From Van Wert over U.S. Highway 224 to Lodi. Service is not authorized to or from the termini or intermediate points.

Between Council Bluffs, Iowa, and Chicago, Ill.: From Council Bluffs over U. S. Highway 6 to Princeton, Ill., thence over U. S. Highway 34 to Chicago, Service is authorized to and from the intermediate points of Des Moines and Davenport, Iowa.

Between Chicago, Ill., and Cleveland, Ohio: From Chicago over U. S. Highway 20 and U. S. Highway B. R. 20 to Toledo, Ohio; thence over U. S. Highway 23 to its junction with U. S. Highway 6; thence over U. S. Highway 6 to Vermillion, Ohio; thence over Ohio Highway 60 to Birmingham, Ohio; thence over Ohio Highway 113 to Elyria, Ohio; thence over Ohio Highway 57 to its junction with Ohio Highway 254; thence over Ohio Highway 254 to Cleveland. Service is authorized to and from the intermediate point of Toledo, Ohio.

Between Chicago, Ill., and Fort Wayne, Ind.: From Chicago Over U.S. Highway 41 to its junction with U.S. Highway 30 near Dyer, Ind.; thence over U. S. Highway 30 to Fort Wayne. Service is not authorized to or from intermediate points.

Between Lodi, Ohio, and Ebensburg, Pa.: From Lodi over U. S. Highway 224 to New Castle, Pa.; thence over U. S. Highway 422 to Ebensburg. Service is authorized to and from the intermediate point of Akron, Ohio. Service is not authorized to or from the termini.

Between Philadelphia, Pa., and Newark, N. J.: From Philadelphia over U.S. Highway 1 to Newark. Service is authorized to and from the intermediate points of Elizabeth, Trenton, Newark, and Jersey City, N.J., and the off-route points of Passaic and Hoboken, N.J.

Between Chicago, Ill., and junction U. S. Highways 41 and 30: From Chicago Over U. S. Highway 330 to its junction with U. S. Highway 30; thence over U. S. Highway 30 to its junction with U. S. Highway 41 near Dyer, Ind. Service is not authorized to or from the intermediate points or the named junction.

Between Mansfield, Ohio, and Lancaster, Pa.: From Mansfield over U.S. Highway 30 to Lancaster. Service is authorized to and from the intermediate point of Pittsburg, Pa., with no service to or from Lancaster.

Between Albany, N. Y., and Boston, Mass.: From Albany over U. S. Highway 20 to Boston. Service is authorized to and from the intermediate point of Springfield, Mass.

Between Louisville, Ky., and Indianapolis, Ind: From Louisville over U.S. Highways 31E and 31 to junction with U. S. Highway 50; thence over U. S. Highway 50 to Seymour, Ind.; thence over U. S. Highway Alternate 31 to junction U. S. Highway 31; thence over U. S. Highway 31 to Indianapolis. Service is not authorized to or from intermediate points.

Between Irwin Tollgate at the junction of U. S. Highway 30 and the Pennsylvania Turnpike, and Harrisburg, Pa., (as an alternate route): from Irwin Tollgate over the Pennsylvania Turnpike to the Middlesex Tollgate, and thence over U. S. Highway 11 to Harrisburg. Service is not authorized to or from intermediate points.

Return over these routes.

Service is authorized to and from points in the Chicago, Ill., commercial zone as defined in Chicago, Ill., Commercial Zone, 1. M. C. C. 673, as intermediate and off-route points in connection with the above authorized regular-route operations.

Service is authorized over any combination of the above-described routes regardless of whether the routes joined have a common point of service.

Restriction: No service is authorized between Philadelphia and New York City or between Elizabeth, Trenton, Newark, Jersey City, and Passaic, on the one hand, and Philadelphia and New York City on the other. No service is authorized between Boston, on the one hand, and New York City, Jersey City, Newark, Elizabeth, Passaic, Trenton and Philadelphia, on the other.

Dangerous explosives, over regular routes, in connection with said carrier's authorized regular routes, regardless of whether the routes used in combination have a common authorized point of service.

Between Decatur, Ill., and Indianapolis, Ind.: From Decatur over U.S. Highway 36 to Indianapolis. Service is not authorized to or from Decatur the intermediate points.

Between Shoals, Ind., and Louisville, Ky.: From Shoals over U.S. Highway 150 to Louisville. Service is not authorized to or from Shoals or the intermediate points.

Between Indianapolis, Ind., and junction U.S. Highways 52 and 24 (near Kentland, Ind.): From Indianapolis over U. S. Highway 52 to junction U. S. Highway 24. Service is not authorized to or from the described junction or the intermediate points.

Between Cincinnati, Ohio, and Zanesville, Ohio: From Cincinnati over U.S. Highway 22 to Zanesville. Service is not authorized to or from Zanesville or the intermediate points.

Between Fort Wayne, Ind., and Toldo, Ohio: From Fort Wayne over U.S. Highway 24 to Toledo. Service is not authorized (1) over this route between Toledo, on the one hand, and, on the other, points east of the Illinois-Indiana State line, (2) to or from intermediate points.

Between Cleveland, Ohio, and Deerfield, Ohio: From Cleveland over Ohio Highway 14 to Deerfield. Service is not authorized to or from Deerfield, or the intermediate points.

Between New York, N. Y., and Springfield, Mass.: From New York over U. S. Highway 1 to New Haven, Conn., and thence over U. S. Highway 5 to Springfield. Service is not authorized to or from intermediate points.

Return over these routes.

Dangerous Explosives:

Between Pittsburgh, Pa., and Detroit, Mich.: From Pittsburgh, Pa., over U. S. Highway 22 to Zanesville, Ohio, thence over U. S. Highway 40 to Columbus, Ohio, thence over U. S. Highway 33 to Marysville, Ohio, thence over Ohio Highway 31 to Kenton, Ohio, thence over U. S. Highway 68 to Toledo, Ohio, and thence over U. S. Highway 24 to Detroit, Mich., and return over the same route. Service is authorized to and from the intermediate points of Zanesville, Toledo, and Columbus, Ohio; and the off-route points of Lancaster, Dayton, and Springfield, Ohio.

Between Charleston, W. Va., and Nitro, W. Va.: From Charleston over U.S. Highway 35 to Nitro, and return over the same route.

Between Charleston, W. Va., and Huntington, W. Va.: From Charleston over U.S. Highway 60 to Huntington, and return over the same route. Service is authorized to and from the off-route points of Kenova, Ceredo, and Owens, W. Va.

Between Clarksburg, W. Va., and Marietta, Ohio, as follows: From Clarksburgh over U.S. Highway 50 to Parkersburg, W. Va., thence over U.S. Highway 21 to Marietta. From Clarksburg over U.S. Highway 50 to Belpre, Ohio, thence over Ohio Highway 7 to Marietta; and return over these routes to Clarksburg. Service is authorized to and from the off-route points of Harrisville, Big Springs, Washburn, Mahone, Mount Zion, Grantsville, Cairo, and Smithville, W. Va.

Between Clarksburg, W. Va., and Charleston, W. Va.:
From Clarksburg over U.S. Highway 19 to Weston, W. Va., thence over U.S. Highway 119 via Clendenin, W. Va. to Charleston. From Clarksburg over U.S. Highway 19 to Sutton, W. Va.; thence over West Virginia Highway 4 to Clendenin, W. Va., and thence to Charleston, as specified above; and return over these routes to Clarksburg.

Service is authorized to and from the off-route points of San Fork, Lost Creek, Burnsville, West Milford, Gilmer Station, McWhorter, Clay, and Crawford, W. Va.

Between Clarksburg, W. Va., and Pittsburgh, Pa.: From Clarksburg over U. S. Highway 19 to junction Bethel Road, thence over Bethel Road to junction Pennsylvania Highway 88, thence over Pennsylvania Highway 88 to Overbrook, Pa.; and thence over Pennsylvania Highway 51 to Pittsburgh, and return over the same route. Service is authorized to and from the off-route points of Coraopolis and McKees Rocks, Pa.

Between Morgantown, W. Va., and Pittsburgh, Pa., as follows:

From Morgantown over U. S. Highway 119 to Uniontown, Pa., thence over Pennsylvania Highway 51 to junction Pennsylvania Highway 711, thence over Pennsylvania Highway 711 to Fayette City, Pa., thence over Pennsylvania Highway 906 via Milesville and Elizabeth, Pa., to East McKeesport, Pa., thence over U.S. Highway 30 to Pittsburgh. From Morgantown to Milesville as specified above, thence over Pennsylvania Highway 31 to junction Pennsylvania Highway 51, thence over Pennsylvania Highway 51 to Elizabeth, thence across the Monongahela River to West Elizabeth, Pa., thence over Pennsylvania Highway 837 to Pittsburgh; and return over these routes to Morgantown.

Between Uniontown, Pa., and Greensburg, Pa.: From Uniontown over U.S. Highway 119 to Greensburg, and return over the same route.

Between Clarksburg, W. Va., and Wheeling, W. Va., as follows: From Clarksburg over U. S. Highway 19 to Fairmont, then over U.S. Highway 250 to Wheeling. From Clarksburg over U.S. Highway 19 to junction West Virginia Highway 7, thence over West Virginia Highway 7 to Blacksville, W. Va., thence over West Virginia Highway 218 to the West Virginia - Pennsylvania State line, thence over

Pennsylvania Highway 218 to Waynesburg, Pa., thence over U.S. Highway 19 to Washington, Pa., and thence over U. S. Highway 40 to Wheeling; and Return over these routes to Clarksburg. Service is authorized to and from the off-route points of Grant Town, Brady, Dakota, Lumberport, Fairview, Star City, Lowesville, Everettsville, Booth, Arenttsville, Pursglove, National and Carolina, W. Va.

Between Clarksburg, W. Va., and French Creek, W. Va.: From Clarksburg over West Virginia Highway 20 to French Creek, and return over the same route.

Between Clarksburg, W. Va., and Elkins, W. Va.: From Clarksburg over West Virginia Highway 20 to Hodgesville, W. Va., thence over U.S. Highway 119 to Philippi, W. Va., and thence over U.S. Highway 250 to Elkins, and return over the same route. Service is authorized to and from the off-route points of Volga, Coalton, Century, Norton, and Meriden, W. Va.

Between Clarksburg and Grafton, W. Va.: From Clarksburg over U.S. Highway 50 to junction West Virginia Highway 77, thence over West Virginia Highway 77 to junction U.S. Highway 250, thence over U.S. Highway 250 to Philippi, W. Va., and thence over U.S. Highway 250 to Grafton, and return over the same route. Service is authorized to and from the off-route points of Brownton and Wendel, W. Va.

Between Clarksburg, W. Va., and Kingwood, W. Va., as follows: From Clarksburg over U. S. Highway 50 to Fellowsville, W. Va., thence over West Virginia Highway 26 to Kingwood.

From Clarksburg to Fellowsville as specified above, thence over West Virginia Highway 26 to junction unnumbered highway, and thence over unnumbered highway to Kingwood; and return over these routes to Clarksburg. Service is authorized to and from the off-route points of Newburgh, Independence, and Camp Dawson, W. Va.

Between Morgantown, W. Va., and Red House, Md.: From Morgantown over West Virginia Highway 7 to the West Virginia-Maryland State line, thence over Maryland Highway 39 to Oakland, Md., and thence over U. S. Highway 219 to Red House, and return over the same route. Service is authorized to and from the off-route points of Deer Park and Mountain Lake Park, Md.

Between Newcreek, W. Va., and Cumberland, Md.: From Newcreek over U.S. Highway 220 to Cumberland, and return over the same route. Service is authorized to and from the off-route point of Piedmont, W. Va.

Between Pittsburgh, Pa., and Charleston, W. Va.: From Pittsburgh over U.S. Highway 19 to Washington, Pa., thence over U.S. Highway 40 to Wheeling, W. Va., thence over West Virginia Highway 2 to Parkersburg, W. Va., and thence over U.S. Highway 21 to Charleston, and return over the same route. Service is authorized to and from the off-route points of Ravenswood and Elizabeth, W. Va., and points on West Virginia Highway 2 between Weirton and Wheeling, W. Va. Service is authorized to and from all intermediate points on the above-specified routes.

Between Charleston and Clarksburg, W. Va., and Baltimore, Md. as follows: From Charleston over U.S. Highway 60 to Lexington, Va., thence over Washington, D. C., and thence over U.S. Highway 1 to Baltimore. From Clarksburg over U.S. Highway 50 to Washington, D. C. thence over U.S. Highway 1 to Baltimore; and return over these routes to Cnarleston and Clarksburg. Service is authorized to and from all intermediate points in West Virginia and the off-route points of Ronceverte, Montgomery, Cabin Creek, Rowlesburg, Elk Garden, Blaine, and Manheim, W. Va., without restriction; the intermediate points of Winchester and Rosslyn, Va., for traffic other than that moving from points in Maryland, Virginia, and the

District of Columbia, and the off-route points of Luray and Alexandria, Va., for traffic other than to or from points in Maryland and Virginia; and Beltsville, College Park, and Hyattsville, Md., restricted to traffic moving to or from points in West Virginia.

Between Hagerstown, Md., and Winchester, Va.: From Hagerstown over U.S. Highway 11 to Winchester, and return over the same route. Service is not authorized between termini or to or from intermediate points.

Between Martinsburg, W. Va., and Charlestown, W. Va.: From Martinsburg over West Virginia Highway 9 to Charlestown, and return over the same route. Service is not authorized between termini or to or from intermediate points.

Between Pittsburgh, Pa., and Baltimore, Md.: From Pittsburgh over U.S. Highway 30 to McConnellsburg, Pa., thence over Pennsylvania Highway 16 to the Pennsylvania - Maryland State line, thence over Maryland Highway 32 to Westminster, Md., and thence over U.S. Highway 140 to Baltimore, and return over the same route. Service is authorized to and from the intermediate and off-route points of Greensburg, Jeanette, Monessen, Fayette City, Charleroi, and McKeesport, Pa.

Between Wheeling, W. Va., and Washington, D. C.: From Wheeling over U.S. Highway 40 to Frederick, Md., thence over U.S. Highway 240 to Washington and return over the same route. Service is authorized to and from intermediate points, as follows: Washington, D.C. restricted to traffic moving to or from points other than those in Maryland; all other intermediate points without restriction; and the off-route points of Bellaire, Martin's Ferry, Yorkville, and Steubenville, Ohio.

Between Winchester, Va., and Baltimore, Md.: From Winchester over U.S. Highway 340 to Frederick, Md., thence over U.S. Highway 40 to Baltimore, and return over the same route.

Service is not authorized between termini.

Service is authorized to and from all intermediate points restricted to traffic moving to or from points in West Virginia, Ohio, or Pennsylvania.

Between Luray, Va., and Washington, D.C.: From Luray over U.S. Highway 211 to Washington, and return over the same route. Service is not authorized between termini or to or from intermediate points.

Between Pike, W.Va., and Marietta, Ohio: From Pike over Alternate U.S. Highway 50 to Marietta, and return over the same route. Service is not authorized to or from intermediate points.

Between Grafton, W.Va., and Morgantown, W.Va.: From Grafton over U.S. Highway 119 to Morgantown, and return over the same route. Service is not authorized to or from intermediate points.

Between Pittsburgh, Pa., and Ford City, Pa.: From Pittsburgh over Pennsylvania Highway 28 to junction Pennsylvania Highway 128, thence over Pennsylvania Highway 128 to Ford City, and return over the same route. Service is authorized to and from the intermediate points of Creighton and Brackenridge, Pa.

Between Greensburg, Pa., and Brackenridge, Pa.: From Greensburg, Pa. over Pennsylvania Highway 366 to New Kensington, Pa., thence across the Allegheny River to junction Pennsylvania Highway 28, and thence over Pennsylvania Highway 28 to Brackenridge, and return over the same route.

Service is not authorized to or from intermediate points.

Irregular routes:

Dangerous explosives:

From Fairfax, Kans., to all points and places in Iowa, Illinois, Indiana, Ohio, New York, New Jersey, and Pennsylvania.

From Norwalk and South Norwalk, Conn., and Gloucester, Mass., to Kansas City and St. Louis, Mo., and Chicago, Ill.

From Omaha, and Falls City, Nebr., Council Bluffs, Harlan, and Des Moines, Iowa, Chicago, Ill., from points and places in Missouri on and south of U.S. Highway 24 and on and west of U.S. Highway 65, and from points and places in Kansas on, east, and north of a line beginning at the Kansas-Nebraska State line, and extending along U. S. Highway 77 to Riley, Kans., thence along U.S. Highway 24 to Topeka, Kans., thence along U.S. Highway 75 to Yates Center, Kans., and thence along U.S. Highway 54 to the Kansas-Missouri State line, to Louisville, Ky., and to points and places in Illinois, Ohio, Pennsylvania, New York, New Jersey, Connecticut, and Massachusetts, on the regular routes shown above.

Return with no transportation for compensation except as otherwise authorized.

Restriction: The above-specified commodity may not be transported to or from points on the regular routes authorized above.

Dangerous explosives, in truckload lots:

Between Washington, D. C., on the one hand, and, on the other, points and places in West Virginia, traversing Virginia and Maryland for operating convenience only.

From Clarksburg, Charlestown, and Bluefield, W. Va., to points and places in West Virginia, with no transportation for compensation on return except as otherwise authorized.

The authority granted herein and that previously granted said carrier to the extent they duplicate, shall not be construed as conferring more than one operating right. Any repetition in the statement of authority granted shall not be construed as conferring duplicate opening rights.

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ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 25th day of March , A. D. 1959.

No. MC-200 (Sub-No. 84)

RISS & COMPANY, INC., EXTENSION - EXPLOSIVES
(Kansas City, Mo.)

No. MC-200 (Sub-No. 34 TA)
No. MC-200 (Sub-No. 35 TA)
No. MC-200 (Sub-No. 40 TA)
No. MC-200 (Sub-No. 42 TA)
No. MC-200 (Sub-No. 60 TA)
No. MC-200 (Sub-No. 62 TA)
No. MC-200 (Sub-No. 63 TA)

RISS & COMPANY, INC.

Upon consideration of the record in the above-entitled proceedings, and of petition, filed February 9, 1959, by applicant in substance for leave to withdraw the application in No. MC-200 (Sub-No. 84); and good cause appearing therefor:

It is ordered, That the order in No. MC-200 (Sub-No. 84), dated September 19, 1955, insofar as it reopened the proceeding for further hearing solely with respect to applicant's fitness to conduct operations as a common carrier in interstate or foreign commerce (1) of the commodities classified as class A, class B, and class C explosives in our Rules and Regulations Governing the Transportation of Explosives and Other Dangerous Articles, (2) of ammunition not included with the classes specified in (1) above, and (3) of component parts of ammunition and of class A, class B, and class C explosives, between designated sites and points be, and it is hereby, vacated and set aside;

It is further ordered, That said application in No. MC-200 (Sub-No. 84) be, and it is hereby, dismissed at the request of the applicant;

It is further ordered, That the outstanding temporary authorities granted to Riss & Company, Inc., in Nos. MC-200 (Sub-No. 34 TA), MC-200 (Sub-No. 35 TA), MC-200 (Sub-No. 40 TA), MC-200 (Sub-No. 42 TA), MC-200 (Sub-No. 60 TA), MC-200 (Sub-No. 62 TA) and MC-200 (Sub-No. 63 TA) be, and they are hereby, revoked on our own motion, as of the date of this order;

It is further ordered, That the petition of rail carriers to vacate the order of the Commission dated April 26, 1951, in the said temporary authority proceedings be, and it is hereby, denied, in view of the action taken herein.

By the Commission.

HAROLD D. McCOY,

(SEAL)

Secretary

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M-7808

INTERSTATE COMMERCE COMMISSION

P/t 17

No. MC-200 (Sub-No. 84) [1]

RISS & COMPANY, INC., EXTENSION—EXPLOSIVES

Decided September 19, 1955

1. In No. MC-200 (Sub-No. 84), public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle of dangerous explosives, ammunition, and component parts thereof, over irregular routes, between the Naval Ammunition Depot at Crane, Ind., and the Naval Ammunition Depot at Earle, N. J., and between the Naval Ammunition Depots at Earle and Hingham, Mass., including points within 3 miles of each depot. Proceeding reopened for further hearing solely with respect to applicant's fitness to conduct such operation.
2. Public convenience and necessity found to require operations by applicants as common carriers by motor vehicle of dangerous explosives, ammunition, and component parts thereof over irregular routes, (1) in No. MC-35628 (Sub-No. 170) between Chicago, Ill., and the Naval Ammunition Depot at Hingham, Mass., and points within 3 miles of such depot, (2) in No. MC-69116 (Sub-No. 15) between the Naval Ammunition Depot at Crane, Ind., and the Naval Ammunition Depot at Hingham, Mass., and points within 3 miles of each depot, and (3) in No. MC-106943 (Sub-No. 35), between Chicago, Ill., and the Naval Ammunition Depot at Earle, N. J., and points within 3 miles of such depot. Issuance of limited-term certificates approved upon compliance by the specified applicants with certain conditions.
3. In Nos. MC-730 (Sub-No. 25), MC-966 (Sub-No. 6), MC-954 (Sub-No. 34), MC-38183 (Sub-No. 28), and MC-58948 (Sub-No. 57), public convenience and necessity found to require operation by applicants as common car-

[1] This report also embraces No. MC-35628 (Sub-No. 170), Interstate Motor Freight System Extension—Explosives; No. MC-730 (Sub-No. 25), Pacific Intermountain Express Co. Extension—Explosives; No. MC-954 (Sub-No. 34), Mid-States Freight Lines, Inc., Extension—Explosives; No. MC-966 (Sub-No. 6), Capitol Truck Lines, Inc., Extension—Pauline, Kans., Air Depot; No. MC-1091 (Sub-No. 4), Garford Trucking, Inc., Extension—Explosives; No. MC-3261 (Sub-No. 16), Kramer Bros. Freight Lines, Inc., Extension—Explosives; No. MC-25567 (Sub-No. 27), Hancock Trucking, Inc., Extension—Explosives; No. MC-38183 (Sub-No. 28), Wheelock Bros., Inc., Extension—Pauline, Kans., Air Depot; No. MC-38183 (Sub-No. 29), Wheelock Bros., Inc., Extension—Explosives; No. MC-47142 (Sub-No. 49), C. I. Whitten Transfer Co. Extension—Explosives; No. MC-52709 (Sub-No. 41), Ringsby Truck Lines, Inc., Extension—Explosives; No. MC-55874 (Sub-No. 12), Independent Truckers, Inc., Extension—Explosives; No. MC-58948 (Sub-No. 53), Union Transfer Company Extension—Explosives; No. MC-58948 (Sub-No. 57), Union Transfer Company Extension—Pauline, Kans., Air Depot; No. MC-64994 (Sub-No. 9), Hennis Freight Lines, Inc., Extension—Explosives; No. MC-69116 (Sub-No. 15), Spector Motor Service, Inc., Extension—Explosives; No. MC-70451 (Sub-No. 128), Watson Bros. Transportation Co., Inc., Extension—Explosives; No. MC-102682 (Sub-No. 224), Hughes Transportation, Inc., Extension—Explosives; No. MC-105807 (Sub-No. 11), Red Ball Transfer Co., Extension—Explosives; No. MC-106943 (Sub-No. 35), Eastern Motor Express, Inc., Extension—Explosives; No. MC-108155 (Sub-No. 31), Mid-Continent Freight Lines, Inc., Extension—Explosives; No. MC-111700 (Sub-No. 5), Pracka Transportation, Inc., Extension—Explosives; and No. MC-112582 (Sub-No. 4), T. M. Zimmerman Co., Extension—Explosives.

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riers of general commodities, with certain exceptions, in interstate or foreign commerce, serving the 832nd Air Force Specialized Depot at Pauline, Kans., in off-route or intermediate point service in connection with their regular-route operations to and from Topeka, Kans., and applicants found fit, willing, and able properly to perform such service. Issuance of certificates approved upon compliance by the specified applicants with certain conditions.

4. Public convenience and necessity found not to require the other operations proposed by the applicants in each of the considered applications as common carriers by motor vehicle of dangerous explosives and other commodities between various points in the United States.

5. Applications in all other respects denied.

A. Alvis Layne, Jr., H. Charles Ephraim, William C. Dannevik, Jr., T. B. Johnston, George S. Norcross, A. S. Glikbarg, Wilmer A. Hill, Eugene L. Cohn, Bernard G. Colby, Wentworth E. Griffin, V. J. Livingston, Harris J. Klein, William Biederman, Ferdinand Born, Franklin R. Overmyer, Charles T. Dodrill, Fred H. Mackensen, Drew L. Carraway, Homer S. Carpenter, James E. Wilson, Jack Goodman, David Axelrod, Edward G. Baselon, Loyal G. Kaplan, Samuel Zacharia, Samuel V. Cooper, W. H. Thickett, Frank B. Hand, Jr., Milton E. Diehl, John E. Lesow, Thomas J. Hogan, Max G. Morgan, Carmine Garofalo, John M. Musselman, Spencer T. Money, C. Rex Jeans, Daniel W. Long, J. W. McFadden, B. M. Brunson, Jr., Harold G. Hernly, Paul M. Hupp, James L. Beattey, Stanley P. Clay, Beverley S. Simms, Floyd F. Shields, Glenn F. Morgan, Morris D. Acree, M. Krupinsky, James R. Regester, Rollo E. Kidwell, Trumon A. Stockton, Marion F. Jones, Carl L. Phinney, Walter C. Homann, Charles Campbell Brown, J. J. Kuhner, E. B. Evans, Leroy H. Cox, Ernie Adamson, Charles F. Davis, Francis W. McInerny, Daniel W. Long, George A. Sims, Rulon C. Ashworth, and *Harry C. Ames, Jr.,* for motor-carrier applicants, motor-carrier protestants, and motor-carrier interveners in opposition.

M. L. Royar, F. L. Haerlin, and *Clement T. Mayo* for the Department of Defense.

C. Dickerman Williams and *Samuel W. Earnshaw* for the Department of Commerce.

Peter T. Beardsley and *Edgar Idol* for a trucking association.

Frank L. Tobin, Clifford W. Frederick, Harold N. McLaughlin, Guy L. Brown, Martin H. Miller, and *W. D. Johnson* for labor organizations.

R. Granville Curry, Frederick M. Dolan, Ross D. Netherton, and *Kermit B. Rykken* for an automobile association.

Joseph H. Bruun for a motor club.

Harrington Adams, Phil H. Lewis, Forrest G. Ferris, Jr., Joseph H. Crowley, James M. McSweeney, Joseph A. Langfitt, Jr., Francis J. Roche, Francis I. Howley, Harry G. Slater, E. Weston Wood, Fred

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Bechdolt, Stanley W. Crutcher, Francis E. Cornish, Louis Weinstein, Donald M. Counihan, John R. White, William E. Powers, William C. Marland, W. Bryan Spillers, Anne X. Alpern, James E. Crowe, H. Albert Young, Howard E. Lynch, Jr., Theodore D. Parsons, Robert E. Woodside, Thomas P. Cook, Francis E. Kelly, J. Emmett McManamon, George C. Conway, Chauncey Browning, Fred C. Maloney, Denis M. Hurley, John George Fox, Max J. Lipkin, Walter J. Mattison, J. D. Wright, James J. Thornton, Matthew S. Heaphy, George Fingold, and *Vernon W. Thomson* for various cities and States.

B. L. Visscher and *Wilbur LaRoe, Jr.*, for Triborough Bridge and Tunnel Authority and the Port of New York Authority.

Charles J. Hahn, Mrs. Paul E. Clear, Mrs. Lorain Stein, Mitchel J. Valicenti, and *John R. Staley* for interested parties.

J. E. Bryan, Wilbur LaRoe, Jr., Frederick E. Brown, Arthur L. Winn, Jr., and Samuel H. Moerman for various shipper organizations.

Joseph H. Hays, James W. Nisbet, John J. Burchell, Basil Cole, Richard T. Wilson, Jr., R. M. Olson, Elias Lyman, Jr., F. X. Masterson, A. O. Bjorklund, Francis J. Steinbrecher, R. J. Lehman, Oscar P. Wieland, L. James Huegel, John C. Lyon, Frank A. Wisberg, Charles T. Abeles, Russell B. James, Thormund A. Miller, H. D. Boynton, Walter A. Renz, Richard J. Lally, Herbert R. O'Conor, Jr., C. A. Sturtevant, L. A. LaSure, Harold A. Hoppe, L. C. Adcock, R. W. Cronon, Joseph P. Cook, K. H. Lundmark, L. W. Dicks, William M. Moloney, R. C. Volkert, Conrad Olson, Thomas N. Cook, Rene J. Gunning, R. R. Chavis, H. V. Cook, J. D. Feeney, Jr., Amos M. Mathews, Ed White James G. Blaine, and *Lewin W. Wickes, Jr.*, for various railroads and railroad associations.

Report of the Commission

By the Commission:

Exceptions to the report and order recommended by the examiner were filed by some of the applicants, by the opposing rail carriers and several protesting motor carriers, and by a number of States, cities, and public and other organizations. Replies to these exceptions in whole or in part were filed by certain of the parties, and the issues were orally argued. Our conclusions differ somewhat from those recommended.

Some of the parties request us to make specific findings which are set forth in their exceptions. Certain of the requested findings are discussed in the report under appropriate subjects. Exceptions and findings not discussed herein nor reflected in our findings or conclusions have been considered and found not justified.

The examiner's report sets forth the facts of record in detail, and his findings will be discussed more fully later. The exceptions are varied in scope and applicability and will be treated under the ap-

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propriate matters with which they deal. Except to the extent required for a clear understanding of the problems presented, we will not repeat all of the underlying factual details set forth in the examiner's report. In the interests of brevity and wherever deemed feasible, only the essential substance of the facts stated therein will be used in this report. To supply any resulting deficiency, the examiner's report is hereby referred to and made a part hereof.

The proceedings are without parallel in the history of our regulation of motor carriers. Under consideration are 24 applications seeking certificates of public convenience and necessity to transport dangerous explosives, ammunition, and component parts thereof, and in some instances other commodities, over regular and irregular routes, or to serve the 832nd Air Force Specialized Depot near Pauline, Kans., in the transportation of general commodities, excluding dangerous explosives. The territory embraced therein collectively covers 34 States and the District of Columbia. In order to understand the scope and complexity of the issues presented, a history of the proceedings is helpful.

In 1951 there were a number of applications for authority to transport dangerous explosives and related commodities awaiting assignment for hearing, including No. MC-200 (Sub-No. 84), Riss & Company, Inc., (herein called Riss) then pending a new hearing following the decision in *Riss & Co.* v. *United States*, 341 U. S. 907. The Riss and 16 other of these applications were considered in a prehearing conference attended by representatives of the Department of Defense, the applicants, other motor carriers, and the railroads. It was agreed by the interested parties that all these applications would be assigned for hearing at Chicago, Ill., that the Riss application would be heard first on a separate record; that the other applications would be heard on a consolidated record; that the evidence of the Department of Defense concerning its needs for the transportation of explosives and related commodities would be presented in the *Riss* case; and that the testimony, cross-examination, and exhibits of the witnesses for the Department of Defense and for the protesting railroads received in the *Riss* case would be incorporated by reference into the record made in the other proceedings. The Department of Defense also agreed to outline in writing, prior to the hearings, its testimony and to serve copies of such outline on all interested persons. Prior to and after the release of this information, other motor carriers had filed or did file applications for certificates to transport dangerous explosives and related commodities; and, upon request of the applicants, these applications were assigned for hearing at Chicago, with the understanding that they would be heard on the consolidated

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record with the other applications and would be handled in accordance with the prehearing conference agreements.

The hearing in the *Riss* case was called first. Fifty-nine other applications were called for hearing later on a single record under No. MC–35628 (Sub-No. 170), Interstate Motor Freight System, hereinafter termed the consolidated cases, the hearing in which was continued from time to time until the Riss hearing had been concluded. Collectively the 60 applications sought certificates to transport dangerous explosives and other commodities between, or from and to, or through points in most of the United States. During the hearings, 36 of the applications were dismissed at the request of the respective applicants.

The character of the traffic to be transported created unusual interest in these cases. At and subsequent to the hearings, numerous motor carriers, rail carriers, railroad associations, rail and other labor organizations, States and State organizations, municipalities, public and private organizations, The American Automobile Association, Inc., hereinafter called A. A. A., and others intervened in opposition to the Riss application. Most of them also intervened in opposition to the consolidated cases. The Department of Defense intervened in all of the cases to protect its interests as they might appear. The Secretary of Commerce intervened in the *Riss* case as his interests might appear, and in opposition to the consolidated cases. The American Trucking Associations, Inc., hereinafter called A. T. A., intervened in all of the proceedings in the interests of the motor-carrier industry generally and not in support of any particular motor carrier. Some of the motor-carrier applicants intervened in opposition to each other, and others intervened in support of certain applications in whole or in part.

In accordance with the prehearing conference agreements, the protesting railroads presented at the hearing in the *Riss* case, evidenced in opposition to the Riss application and to the consolidated cases. This evidence, that submitted by the Department of Defense, and that adduced by others was, by agreement of the parties, incorporated by reference into the record in the consolidated cases.

DISPOSITION OF APPLICATIONS IN A SINGLE REPORT

Although the *Riss* case and the consolidated cases were separately heard, they are closely related in their issues, and the examiner disposed of all of them in a single report and recommended order, citing *United States* v. *Pierce Auto Freight Lines, Inc.*, 327 U. S. 515. Riss complains of such procedure, representing that this action was contra to the prehearing conference agreements and resulted in prejudice to

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it. It also requests in effect that its application be disposed of in a final report separately from the other applications. While the pre-hearing conference agreements included an agreement that the *Riss* case would be heard separately, they did not include an agreement that the *Riss* case would be made the subject of a separate report and recommended order or a separate final report. The real substance of Riss' position appears to be that the examiner used evidence contained in the consolidated cases, and also to some extent evidence which otherwise was inadmissable, in disposing of its application.

The records in the proceedings are lengthly and complicated. We are asked, among other things, to determine upon such records the extent and scope of certain transportation needs of the Department of Defense, and to select the applicant or applicants necessary to perform the motor service required by the public convenience and necessity. Clearly, this cannot be done by separate consideration of the respective applications, for this is a task which by its very nature requires consideration of all the applications simultaneously. Such action also is within the principles of the *Pierce* case.

In that case the Supreme Court had under review the validity of an order of this Commission which had been suspended by decree of the district court. The matter involved concerned two separately filed applications for operating authority which had been heard on separate records by different joint boards, but which had been disposed of in a single final report. In upholding our order, the Supreme Court said, at page 523:

> Obviously the [District] Court's objection was not to the manner in which the proceedings were conducted prior to the time when the hearings ended and the Commission took the cases under consideration. Up to this point no fault is found with what was done. The difficulty lay altogether, in the Court's view, with the way in which it thought the Commission had considered the cases and reached its conclusions. And this arose entirely from the fact that the Commission disposed of them in a single report, rather than in separate ones for each case; and from the further fact that it concluded that both applications should be granted rather than that both should be denied or one denied and one granted.
>
> We are not informed, of course, whether the Court would have reached the same result if the Commission had written separate reports in each case, arriving at the same conclusions, although it seems suggested that any of the other possible results would have been impeccable, whether stated in separate reports or a single one. Obviously, it was no sufficient ground for suspending the Commission's order that it chose to write one report rather than two, especially in matters as closely related as these, if the single report, together with the findings and the evidence was sufficient to sustain the action taken in each case. It is not uncommon judicial practice to follow this course.
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> * * * * * * *
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> We turn therefore to the objections made on the score of the Commission's findings and its treatment of the evidence. In our opinion they are equally untenable. The principal cause of complaint in these respects is that the Com-

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mission did not consider each case exclusively on its own record but looked to the evidence in both proceedings in forming its judgment. If this is true and if it has resulted in substantial prejudice to the appellees, as might occur, for example, if the Commission were shown prejudicially to have considered evidence bearing on one case which did not affect it and was presented in the other, and which appellees were given no opportunity to meet, the orders, or one of them, would be improperly grounded.

But no showing of this sort has been made. It is to be recalled that all of the appellees, as well as both of the applicants, were parties to both proceedings; were represented at all of the hearings, which were conducted at substantially the same times and places; and were given full opportunity to present all evidence they considered pertinent, to cross-examine witnesses and otherwise to protect their interests. Moreover, large portions of the evidence applied as much to one application as to another. This was true, for example, of the proofs relating to traffic conditions, shipper demands, the need for faster service and mechanical refrigeration, and other items. In these circumstances it is difficult to see how appellees could have sustained substantial prejudice from the Commission's consideration of the evidence upon matters as closely related as those in issue in these two proceedings.

In the absence of any showing of specific prejudice, the claim comes down to the highly technical objection that the Commission, in the final stage of forming its judgment, could not in either case take account of what had been done in the other, notwithstanding the closely related character and objects of the applications and the prior proceedings. The contention in its farthest reach amounts to a legal version of the scriptural injunction against letting one's right hand know what one's left hand may be doing.

Obviously it would be consistent neither with good sense nor, we think, with the type of hearing assured by the statute to force the Commission to put on such complete blinders. Whatever may be the limits outside which it cannot go in looking beyond the record in the particular proceeding at the stage of formulating its judgment, none certainly would go so far. And, given that the report contains all the essential findings required * * *, the Commission is not compelled to annotate to each finding the evidence supporting it.

Riss was a party to all of the cases, and was represented at all of the hearings; and it has failed to show the precise manner in which it has been or will be prejudiced here by the disposal of all of the applications in a single report. Nor can we find any such prejudice; and it would be incongruous, if not impossible, for us to make appropriate findings on these closely related cases without considering the common issues presented thereby as a whole. Like the examiner, we therefore shall consider and dispose of them in one report.

Mid-States Freight Lines, Inc., and Capitol Truck Lines, Inc., hereinafter called Mid-States and Capitol, respectively, seek authority only to serve the 832nd Air Force Depot at Pauline, hereafter called the Pauline Depot. In petitions they request that their applications be severed from the other cases and separate decisions rendered therein, in view of the examiner's recommendations that their applications be granted, and because such action will preclude any further delay in their disposition, which they contend may result

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if they are handled along with the other applications. There are several other applicants seeking the same authority, and some of the protestants contend that all of these applications should be denied. In the circumstances, it is believed that, in fairness to all, these applications should be handled together in one report, and the petitions therefore will be denied.

RULINGS ON EVIDENCE

The size of the proceedings and the complex nature of the evidence suggest the advisability of dealing at this point with the correctness of several important rulings of the examiner. Early in the hearings he was confronted with the question of whether to receive evidence designed to show that the proposed transportation by motor vehicle of dangerous explosives over the highways is undesirable, and that a grant of authority to transport such traffic would aggravate present congestion and hazards on the highways. This evidence concerned generally the following subjects: (1) congestion on city streets and highways; (2) populous and business areas, schools, and hospitals near streets and highways; (3) condition and size of roads and inadequacy of streets, highways, and bridges in general; (4) climatic and topographic conditions on highways; (5) use of bridges and tunnels and the possibility and effects of their destruction; (6) adequacy of our safety regulations governing the motor transportation of dangerous explosives and other dangerous articles; (7) the alleged lack of adequate Commission personnel to enforce our regulations; (8) lack of adequate State police; (9) general accident data; (10) data concerning accidents in the transportation of explosives by motor vehicle; (11) general safety of motor transportation of dangerous explosives; and (12) possibility of damage to rail facilities and injury to rail employees and others.

Over the continuing objections of Riss, other motor carriers and A. T. A., the examiner received considerable evidence of this character. A joint petition filed by Riss and four other parties in the *Riss* case seeking the issuance of a declaratory order reversing the examiner's ruling was denied by division 5 of the Commission, and the examiner adhered to his ruling in his report. On exceptions and oral argument, a number of the parties renew their protests to the receipt of the described evidence. Their objections, for the most part, follow a well-defined pattern to the effect that such evidence is irrelevant and immaterial to the issues and should be rejected and given no consideration. They contend that a number of our decisions have consistently taken the view that evidence relating to safety on the highways, congestion on the highways, and similar matters is not pertinent to the issues in section 207 proceedings; and that such evidence, if for consideration,

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should be presented in an appropriate general investigation or a rule-making proceeding, with opportunity to all interested parties to participate therein.

Certain decisions in part tend to support their position. Beginning with *Gollock Extension of Operations*, 1 M. C. C. 161, and *House Contract Carrier Application*, 1 M. C. C. 725, some evidence of the character to which the objections are directed was rejected or found entitled to little or no consideration. In the *Gollock* case, a railroad protestant urged that the transportation of liquid petroleum products, in truck-and-trailer combinations, over the highways proposed to be used by the applicant would endanger the safety of persons using or residing near the highways and of persons traveling on the rail line which parallels such highways. This protestant also offered testimony purporting to show that the transportation of gasoline in truck-and-trailer combinations was so dangerous that the proposed operation was contrary to the public interest. In disposing of these matters, the Commission, division 5, said, at page 163:

> We are of the opinion that under the provisions of section 204 of the act, we are empowered to prohibit certain or all transportation of gasoline in trailer equipment if it is found that such transportation is so unsafe as to require such action. If, however, any such transportation were unsafe to the degree that its prohibition were required, it would be our duty to prohibit it entirely, including its performance by those who have so operated for years, and are entitled to continue their lawful operations by reason of rights under the "grandfather" clause provisions of the act. On the basis of proffered testimony, restricted in scope, this protestant seeks a finding with respect to a matter of general and fundamental importance which properly could be made only as the result of an appropriate investigation and which should be applied to all alike who conduct or propose to conduct the same character of operation over these particular routes or over other routes where similar conditions obtain. While the rejected testimony might have been admitted in evidence as tending to show a need for a general investigation to determine whether the proposed operation of applicant, as well as the numerous similar operations in the same territory, results in undue hazard to the public, we are not prepared to deny this application solely on that ground. The matter is one which will be given due consideration in connection with our safety regulations.
>
> Evidence presented by the Union Pacific as to the alleged congestion on the highways proposed to be used is not convincing that the operation contemplated by applicant will materially add to such congestion. This evidence merely shows that the highways pass through a mountainous region, and that during certain summer months a large volume of traffic moves over the Columbia River Highway, a part of the proposed route, but it does not demonstrate that the highway is incapable of bearing an added volume of traffic equal to or greater than that which would result from the proposed operation.

Similar observations were made in the *House* case. In both cases evidence relating to the condition of the highways and bridges was

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received and considered, but was found not decisive in favor of the protestants.

Comparable questions arose later in *Johnston Common Carrier Application*, 33 M. C. C. 751, and *Ulrich Oil Co. Extension of Operations—Council Bluffs*, 34 M. C. C. 147. In the latter case, the Commission, division 5, said, at page 151:

> Protestants also submitted a voluminous exhibit consisting of reprints of newspaper clippings describing accidents involving the transportation of explosives, including gasoline, over the highways. Other exhibits summarize the accidents involving motor vehicles transporting gasoline in the various States, including Nebraska, with respect to the number of accidents, the number of persons killed, and the number of persons injured. The hearsay character of such evidence is clear. Not only is its probative value very questionable, but the issue on which it was offered, namely, the advisability, from the standpoint of safety, of authorizing the proposed operations, has several times been found not controlling in proceedings such as this. In *Gollock Extension of Operations*, 1 M. C. C. 161, the Commission, division 5, pointed out that, if authority for the proposed operation there considered should be denied because of such considerations, then, by the same token, all other similar operations, even existing "grandfather" operations, should also be prohibited. It was said that while data similar to that here considered might have some value as tending to show a need for a general investigation to determine whether or not all such operations should be prohibited, it should not be controlling in a proceeding on any single application. Compare also *Johnston Common Carrier Application*, 33 M. C. C. 751, which is to the same effect.

None of the cited cases covered applications to transport dangerous explosives, and in the latter two discussed, objectionable hearsay in the form of newspaper clippings was involved. Road conditions and safety matters, however, have been given consideration to some extent by us in determining public convenience and necessity.[3]

On the other hand, we have repeatedly held that dangerous explosives comprise a classification of commodities the transportation of which must be surrounded with special safeguards for the protection of life and property. Numerous applications for authority to transport this traffic have been denied or granted where the only opposition represented the competitive interests of rail and motor carriers. The

[3] *Biddison Contract Carrier Application*, 28 M. C. C. 206, considered the hazards to operation on the highways of heater-equipped tank trucks carrying asphalt, and a condition was attached to the permit granted prohibiting the use of lighted open-flame burners except when the vehicles were at rest and off of the highways. Unsafe road conditions were given consideration in *Axley Extension of Operations—Murphy, N. C.*, 30 M. C. C. 387, in authorizing a carrier to use a highway affording greater safety to the traveling public. In *Vollmer Transp. Inc., Extension—Manchester, Conn.*, 49 M. C. C. 279, it is said that those things which contribute to expedition, safety, and efficiency in operation may properly be taken into consideration in determining the issue of public convenience and necessity. In *W. J. Dillner Transfer Co. Ext.—Radioactive Materials*, 48 M. C. C. 303, evidence from experts in the field of radioactive materials concerning the characteristics of the materials proposed to be transported by motor vehicle and the precautions to be taken in the handling of such materials was received and given consideration in the disposition of the proceeding.

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instant proceedings are different in that, in addition to such opposition, a number of States, cities, individuals, and public and semipublic organizations oppose the applications because of the alleged hazardous character of the traffic. We are not aware of any other application proceeding in which the named classes of the public appeared in opposition, or of any clear-cut decision by us precisely determining the question of the admissibility of evidence of the described character. In any event, we do not agree that the doctrine indicated in the *Gollock* case, the *Johnston* case, and other cases is controlling in these proceedings. One of the principal issues here is whether the present and future public convenience and necessity require the proposed operations. The national transportation policy requires administration of the Interstate Commerce Act so as to promote "safe, adequate, economical, and efficient service." The phrase "public convenience and necessity" is broad in scope, and in proceedings under section 207, we believe that we may properly consider, in appropriate cases such as the instant ones, all matters of every character affecting safety and the public interest, including, among other things, the character of the traffic to be transported; the nature, condition, and adequacy of the highways, bridges, and tunnels to be used; the extent of the traffic congestion on and in such facilities; the location of proposed operating routes with respect to schools, homes, hospitals, and essential industries and installations; the possibility of resulting damage thereto in connection with the proposed operations; and the extent that this Commission and other regulatory bodies are in a position to police the movement of any hazardous traffic involved. This view finds ample support in the courts.

In *Interstate Commerce Commission* v. *Parker*, 326 U. S. 60, the Supreme Court, in discussing what constitutes public convenience and necessity under section 207, said at page 65:

> Public convenience and necessity is not defined by the statute. The nouns in the phrase possess connotations which have evolved from the half-century experience of government in the regulation of transportation. When Congress in 1935 amended the Interstate Commerce Act by adding the Motor Carrier Act, it chose the same words to state the condition for new motor lines which had been employed for similar purposes for railroads in the same act since the Transportation Act of 1920, § 402 (18) and (20), 41 Stat. 477. Such use indicated a continuation of the administrative and judicial interpretation of the language. Cf. *Case* v. *Los Angeles Lumber Co.*, 308 U. S. 106, 115. The Commission had assumed, as its duty under these earlier subsections, the finding of facts and the exercise of its judgment to determine public convenience and necessity. This Court approved this construction. *Chesapeake & Ohio R. Co.* v. *United States*, 283 U. S. 35, 42. Cf. *Gray* v. *Powell*, 314 U. S. 402, 411–12. The purpose of Congress was to leave to the Commission authoritatively to decide whether additional motor service would serve public convenience and necessity. Cf. *Powell* v. *United States*, 300 U. S. 276, 287. This, of course, gives administrative discre-

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tion to the Commission, cf. *McLean Trucking Co. v. United States*, 321 U. S. 67, 87–88, to draw its conclusion from the infinite variety of circumstances which may occur in specific instances.

American Trucking Assns., Inc., v. *United States*, 326 U. S. 77, deals in part with certain evidence excluded at a hearing in one of our proceedings, which was claimed to be pertinent to the issue of public convenience and necessity under section 207. The Court stated, at page 86:

> While as pointed out by the brief of the Seaboard none of this evidence goes to the inherent nature of auxiliary motor service performed by rail carriers, it may be decisive in the Commission's determination of whether to grant the applications. We have just said in the *Parker case* that the Commission must weigh the advantages of improved rail traffic against the injury to the over-the-road motor carriers to determine where public convenience and necessity lies. It is a difficult task to appraise these conflicting interests. It is a problem which should be solved only after the receipt by the Commission, under its usual rules of admissibility, of all available material evidence as to the probable effect of the proposals on the operations both of the proponents of and the protestants against the applications. *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.*, 227 U. S. 88, 91; *Chicago Junction Case*, 264 U. S. 258, 264–65. It is not enough that the railroad's motor operations are found by the Commission to be of a different character from over-the-road motor operations because they are integrated with railroad operation. The Commission must also consider the disadvantage to the public of a serious impairment of the non-rail motor carriers. Those affected are entitled to fully develop the bearing of the proposals on the transportation agencies which are involved. The discretion of the Commission should be exercised after consideration of all relevant information.

The role of this Commission under the public convenience and necessity provisions of the act also is aptly indicated in *United States* v. *Detroit & C. Nav. Co.*, 326 U. S. 236, the Court, at page 241, saying:

> The Commission is the guardian of the public interest in determining whether certificates of convenience and necessity shall be granted. For the performance of that function the Commission has been entrusted with a wide range of discretionary authority. *Interstate Commerce Commission* v. *Parker*, 326 U. S. 60. Its function is not only to appraise the facts and to draw inferences from them but also to bring to bear upon the problem an expert judgment and to determine from its analysis of the total situation on which side of the controversy the public interest lies. Its doubt that the public interest will be adequately served if resumption of service is left to existing carriers is entitled to the same respect as its expert judgment on other complicated transportation problems.

Thus, the phrase "public convenience and necessity" has not been narrowly nor precisely defined by the Supreme Court, but that Court has given it a broad construction designed to preserve to us a flexibility essential to regulation in the public interest. Nor has the phrase been confined by the Court as meaning shipper need for a proposed operation, or limited to exclude an appraisal of the effects of such

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operation on the general public. Rather, the Court has recognized our need for liberality in the receipt of evidence in the multitude of proceedings coming before us, in order to enable us to appraise the advantages and disadvantages of a proposal and to aid in the solution of the problems presented by the parties. To hold that the evidence objected to should be rejected and given no consideration would run contra to the principle, announced by the Court, that in determining public convenience and necessity we should draw our conclusions from "the infinite variety of circumstances which may occur in specific instances."

Clearly we are warranted in these extraordinary proceedings in utilizing all the information made available to us, for, as indicated, public convenience and necessity in its broadest sense embraces all phases of safety and the public interest. We therefore conclude that the evidence objected to is germane to the issues presented and should be given consideration in the disposition of the proceedings. To the extent the *Gollock*, *Johnston*, and other cases of similar import provide views inconsistent with the foregoing, they are hereby overruled.

The protesting railroads presented for identification as exhibits motion picture films allegedly depicting the operations of certain of the applicants in their day-to-day over-the-road transportation of dangerous explosives, offering to project the films at the hearings and to provide the necessary equipment and operators to show the films in our offices at any other time upon the request of any of the parties or by us. The examiner allowed on the record an identification of 1 reel of film as an exhibit, but refused to permit similar identification of 9 other reels, or to receive any of the films in evidence. These protestants did present, however, the cameramen who took the motion pictures, from which they developed orally the contents of the films.

On exceptions, the rail carriers and the Brotherhood of Locomotive Engineers renew their contention that the examiner was in error in refusing (1) to mark for identification as exhibits all of the reels of film, and (2) to admit in evidence any of the films, saying that, as certain of the material contained in the films deals with the fitness of several applicants, the films should have been received in evidence. The Brotherhood of Locomotive Engineers stresses that one purpose of the films was to show the reckless manner in which trucks carrying explosives are being driven in violation of highway and other safety regulations. It asserts that motion picture films were received in evidence in *Johnston* v. *Atchison, T. & S. F. Ry. Co.*, 225 I. C. C. 519, (that decision, however, contains no helpful discussion); and that such films commonly are admitted in evidence by State and Federal courts where relevant and properly authenticated. It argues that under rule 75 of our General Rules of Practice, these films should

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have been received in evidence by the examiner, and that his failure to do so was arbitrary and prejudicial to the protestants.

While rule 75 may permit such films to be received in evidence, rule 84 which sets forth generally the specifications for exhibits, makes no provision for the receipt of motion picture films in our proceedings. Aside from this, the actual use of such films are subject to many disabilities. The parties in preparing briefs, exceptions, and other pleadings could do so only after a showing of the films, and the examiner in preparing his report would require a showing of them. The difficulty in obtaining accurate facts from them concerning alleged violations of law and safety regulations is obvious. We also would be put to considerable inconvenience in arranging for a showing of the films for those desiring their projection after the hearings had been concluded.

The identification of one of the films as an exhibit is sufficient to inform us of the nature of the films as a whole, and we see no reason why all of the films should have been identified as exhibits, in view of the ruling that they would not be received in evidence. In all events, the admissibility in evidence of the motion picture films initially rests in the discretion of the examiner, and there is no showing that such discretion has been exercised arbitrarily or in a manner prejudicial to the protestants. We affirm the examiner's rulings.

The exceptions filed by the city of New York and the Triborough Bridge and Tunnel Authority are accompanied by a petition requesting that the proceedings be reopened for a further hearing, particularly to receive evidence concerning the handling of a truckload of explosives by Riss over the Triborough Bridge in New York. In view of the long hearings held herein and our later discussion, the petition will be denied.

Baggett Transportation Company, hereinafter called Baggett, a protestant, moves to strike certain statements and arguments contained in the exceptions filed by Hughes Transportation, Inc., hereafter called Hughes, in its application No. MC–102682 (Sub-No. 224) and certain portions of the exceptions filed by the Department of Defense, on the grounds that the matters contained therein are not of record. Hughes replied to the motion, which, insofar as concerns this carrier, deals with the interchange of traffic between Hughes and other carriers at the Blue Grass Ordnance Depot near Richmond, Ky. Hughes states on exceptions that this point may no longer be used by it for interchange because of a recently issued order prohibiting interchange by motor carriers within Army installations, and it asks us to take official notice of such order. Baggett also objects to a similar statement in the exceptions of the Department of Defense. In view of our conclusions, and because we see little or no merit in Baggett's position, the motion to strike will be overruled.

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POSITIONS OF THE PARTIES AND ISSUES

The arguments advanced in connection with the positions taken by the parties are exhaustive. They were submitted, generally speaking, by four groups, (1) the applicants, the Department of Defense, and the motor-carrier industry as a whole, (2) the competing railroads, railroad brotherhoods, protesting motor carriers, and users of rail service, (3) certain States, cities, and individuals, and (4) public and private organizations and associations. Each group submitted evidence in support of its respective position. This evidence, detailed in the examiner's report, will be discussed briefly when necessary for clarity of discussion.

The following discussion, together with that elsewhere in the report, sets forth the position of these parties and reflects their principal arguments. Numerous other arguments are advanced, but a detailed recital thereof is not deemed necessary.

The Department of Defense represents that there is a military need for motor-carrier service to supplement rail service from and to the points to which its evidence is directed, in order that it may fulfill its duty in national defense and that adequate service be available to the military. The respective applicants filing exceptions urge the granting of their applications, in whole or in part, and all of the applicants, together with the A. T. A., present a united front with respect to what they term the efforts of the railroads to discredit the motor-carrier industry. Their overall position is that the Department of Defense needs motor-carrier transportation for its traffic from and to the points specified by it; that munitions are suitable and safe for motor-carrier transportation under grants of permanent operating authority; that the existing rail and motor service is neither adequate nor satisfactory in all instances for military needs; and that the granting of the authority sought will not adversely affect rail efficiency, rates, and profits and will be consistent with the national transportation policy.

The Secretary of the United States Department of Commerce, who did not present any evidence, states that the purpose of its intervention is to emphasize to the full the special applicability to the proceedings of the safety considerations and mandates of the national transportation policy and the Interstate Commerce Act, but without prejudice to the established needs and requirements of the Department of Defense and the defense effort.

A. T. A. takes no position in support of, or against, any of the applicants. Rather, it largely takes issue with those opposing parties maintaining that motor highway transportation of explosives is too hazardous to warrant the issuance of permanent authority to perform

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such transportation, contending that the necessity for the transportation of explosives by motor vehicle has been clearly established; that such transportation over the highways is relatively safer than by rail and should not be restricted to authorization on a temporary basis or by the adoption of any general policy against the transportation of military munitions by truck; and that none of the applications should be denied simply because of the impact of motor-carrier competition on the rail carriers.

The arguments of the railroads are novel and all inclusive, being correlated for the most part with the provisions of the national transportation policy. Specifically, for example, after pointing to the precautions used and the practices followed by them in the handling of dangerous explosives, the availability, adequacy, and inherent advantages of their nationwide system of transportation, the efficiency and economy of rail service, and the alleged hazards of truck transportation of explosives because of narrow roads, congested areas, and highway accidents, they contend that we properly cannot grant any of the applications and at the same time carry out our duty under the national transportation policy "to promote safe, adequate, economical, and efficient service." Generally, they argue that the evidence of the Department of Defense discloses a shocking indifference for public safety and utterly fails to show a public need for the issuance of the operating authorities sought; that the transportation of dangerous explosives by motor vehicle is extremely hazardous, particularly in view of the condition of the highways and the congestion and accidents thereon, the possibility of disastrous explosions in cities and towns, on bridges, and near other facilities affecting the public, such as schools, hospitals, churches, and industries, and the lack of compliance by motor carriers with our safety regulations and their disregard of the dangerous nature of explosives; that the alleged advantages of speed and flexibility in truck service is of no real importance; that the existing rail service and facilities are fully adequate to meet the transportaton needs of the Department of Defense and can be readily expanded in time of emergencies; that any diversion of the high-rated explosive traffic from the railroads would adversely impair their operations and affect the interests of shippers of low-rated commodities; that careful consideration should be given to the views of the States and their officials; and that none of the applicants is fit and able to perform the proposed services. They request that all of the applications be denied.

The protesting motor carriers are interested in protecting their businesses against the intrusion of any additional motor-carrier operations. To this end, they object to the authorization of any new

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motor service which they are in a position to render, either singly or jointly with other motor carriers.

The Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Trainmen, and the Order of Railway Conductors, ask that the applications be denied. Collectively they represent that the safety of motor transportation of explosives is an important factor in determining public convenience and necessity; that a grant of the authority sought would result in substantial unnecessary hazards to railroad employees, train passengers, and truckdrivers at highway grade crossings, because of the failure of truckdrivers to observe our safety regulations and other safety practices; and that the grant of the applications would adversely affect the economic interests and working conditions of railroad employees, contrary to the national transportation policy.

On the other hand, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers Union of America, A. F. of L., takes the view that the applications should be granted at least to the extent that Riss has held temporary authority. It contends that unless this is done, some of its members who drive trucks will lose their jobs; that the continued well-being of its members requires the granting of the authority sought; and that such action would not impair the ability of the railroads to maintain a sound rail transportation system or affect the railroad employees, or the safety of the public.

The public opposition to the granting of authority to transport dangerous explosives is substantial, being presented by States, cities, public and private organizations, and others. This opposition, detailed in the examiner's report extensively, next will be reviewed briefly.

The Executive Committee of the Governors' Conference says that the applications should be denied because of the hazards attendant to the transportation of dangerous explosives on the present deteriorated and congested highways; that no mass grant of permanent authorities to transport dangerous explosives by motor vehicle should be issued by us; that where the national defense effort requires such transportation, we should grant temporary permits on an individual basis, under special regulations in cooperation with State officials; that the operations of motor carriers of dangerous explosives should be carefully regulated and an adequate system of regulation should be adopted by the States; and that the Council of State Governments in cooperation with other State agencies and this Commission should submit to the States a suggested code of regulations for the handling and transporting of explosives by motor vehicle.

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The Commonwealth of Massachusetts, the States of Indiana, Rhode Island, Connecticut, and West Virginia, and the cities of Cleveland, Ohio, St. Louis, Mo., Pittsburgh, Pa., and Peoria, Ill., also request that all of the applications be denied. Their position is reflected in the following statement taken from their brief:

> We do not feel that it is necessary in this brief to discuss at length the testimony supporting the applications with respect to the alleged need for transportation of explosives by highway. It may be that on the basis of the record the Commission could find that there is some need for such transportation. However, it is patent that such need is not for permanent wide-open authorities.
>
> The fact that it is undesirable to have explosives transported by truck on public roads and streets can hardly be denied. These interveners therefore oppose such transportation. The evidence before the Commission which shows the hazardous nature of the commodities, and the danger of transporting the commodities by highway particularly under existing conditions of inadequate and over-burdened highways and without adequate policing, fully supports the position of these interveners that no authority should be granted in the form applied for here.

The Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, and the State of New Jersey join in the arguments presented by the above-named States and cities. The State of Wisconsin also contends that the evidence fails to establish any need for the proposed service to and from points in that State, and the city of Milwaukee adopts the same position. The city of Buffalo, N. Y., argues that a grant of any authority for the transportation of explosives would not be in the public interest, particularly one authorizing operations through Buffalo and other large New York cities.

The Triborough Bridge and Tunnel Authority and the city of New York contend that any authorizations to transport explosives over their facilities and streets would imperil the lives of residents of New York, its facilities, and the normal flow of traffic. While they have regulations prohibiting the transportation of explosives under certain conditions, they claim that it is physically impossible to enforce them and ask that the applications be denied. If certificates are granted, they request that the authority be restricted to preclude shipments of explosives from entering New York City and using the bridges. The American Bridge, Tunnel and Turnpike Association joins in the position taken by the Conference of Governors, the Triborough Bridge and Tunnel Authority, and others. It contends that explosives should be excluded from tunnels at all times, and allowed on bridges and turnpikes only under certain conditions; that the applications should be denied; and that temporary authority to transport dangerous explosives should be granted only on a showing that the proposed service is essential to the national defense and then made subject to suitable restrictions to protect the facilities of its members.

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The A. A. A. is strongly opposed to the applications on the grounds of public safety. It contends that the transportation of explosives on the presently overcrowded and inadequate highways is dangerous and hazardous; that the weak expressions of desire of the Department of Defense for motor service strikingly fails to justify the proposed operations in any respect; that there has been an utter failure to establish the inadequacy of the existing facilities of rail and motor carriers to transport the traffic; that in all events the applicants are not fit and able to perform the proposed services; and that if a real and compelling military need for truck service has been shown, such service should be authorized with great caution.

Otherwise, summarized in its important features, the public opposition evidence is to the effect that the highway systems in Connecticut, California, New Jersey, Colorado, Ohio, Wyoming, Arkansas, New Mexico, Iowa, Mississippi, Pennsylvania, Indiana, Maryland, Texas, Louisiana, Delaware, Rhode Island, Illinois, and Oklahoma are inadequate for present traffic loads; that the existing highways in these and other States are greatly congested and many are in need of repair or replacement; that highways, streets, bridges, and tunnels in and about the cities of New York, N. Y., St. Louis, Mo., Rock Island, Ill., Omaha, Nebr., Cleveland, Ohio, Pittsburgh, Pa., Buffalo, N. Y., Peoria, Ill., St. Joseph, Mo., and other points are congested and inadequate for modern day traffic; that traffic congestion is increasing as is the accident rate; that the transportation of dangerous explosives over the existing highways constitutes a potential threat to the safety of the public, other highway traffic, and the highways themselves, and also to bridges, tunnels, and other structures. Particularly stressed is the alleged hazard of motor transportation of explosives to schools, hospitals, industrial areas, important installations, and school children, and the inability of the State and local police and bridge and tunnel authorities, with their insufficient personnel and facilities, to provide adequate supervision for any increased movement of explosives on the highways.

In the broad sense two main issues are thus presented, which may be stated generally as:

1. Are dangerous explosives, from a safety standpoint, suitable for transportation over the highways by motor vehicle, or should the requests for authority to transport such traffic be denied on the grounds of general public policy?

2. Do public convenience and necessity require the proposed operations in whole or in part; and, if so, which applicants should be selected to perform the needed service?

The first concerns the safety of the motor transportation of explosives on the highways; the second presents the usual questions found in

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the ordinary motor-carrier application proceeding. Both issues are interrelated, but, to the extent possible, separate discussion of each is desirable in the interest of an orderly disposition of the problems with which we must deal.

SAFETY

The safety issue embraces several considerations. Four experts in the explosives field testified concerning the nature of explosives generally and also of those shipped by the Department of Defense. Their testimony, and accounts of accidents in the rail and motor transportation of explosives, are discussed in the examiner's report. The views of the expert witnesses are in conflict in some respects, but, like them, we agree that fire or heat is the most dangerous source of accidental explosions. It also appears that under certain circumstances explosions can be caused by collision, friction, impact, sparks, et cetera, but the extent of such possibility cannot be definitely determined upon these records. Pertinent here is the contention of the protesting railroads, raised throughout the proceedings and again on exceptions, that the examiner erred in refusing, on their motions to require the Department of Defense, which declined to do so voluntarily, to produce data in its possession relative to the actual behavior of its dangerous explosives. We affirm the examiner's ruling. Some explosives, including those shipped by the Department of Defense, are relatively safer than others, but the fact remains that all explosives provide hazards in any form of transportation. We need no additional evidence to convince us that all of them, and class A and B explosives in particular, are dangerous when being transported and must be so considered and treated at all times.

In view of the character of the traffic, some of the opposing parties ask us to hold that motor transportation of dangerous explosives should not be permitted, even in the face of a need therefor by the Department of Defense, except possibly under grants of temporary authority and other restrictions or except in the necessary pickup and delivery service for rail carriers. Others merely desire us to prohibit motor transportation of dangerous explosives over certain bridges and highways, or in tunnels; and others want us to prohibit or prevent the motor transportation of these commodities through certain States and cities. In contrast, A. T. A. requests the following findings:

That the transportation of military munitions by properly qualified motor carriers is not, in fact, a particularly dangerous service; that the safety record of motor carriers in the transportation of such commodities is generally excellent; that transportation of such commodities by highway is relatively safer

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than transportation by rail; and that there is absolutely no basis for establishing a general policy against the transportation of military munitions by highway.

One of the applicants also requests similar findings, as follows:

The explosives which are presently being transported by motor carrier pursuant to appropriate authorization by the Commission and in compliance with the Commission's prescribed safety regulations are relatively stable in character. While theoretically these explosives are dangerous they are susceptible to motor-carrier transportation without hazard to the general public other than that which is encountered in the transportation of normal commodities and certainly no greater hazard than that encountered in the transportation of gasoline. Explosives have been transported by motortruck under extremely adverse conditions in the theaters of war operations and the munitions of war which constitute the great body of this traffic have been deliberately designed to make them susceptible to safe transportation under almost any conditions.

The evidence respecting accidents in the transportation of explosives is convincing that munitions are suitable commodities for transportation by motor vehicle when handled in compliance with the Commission's Safety Rules and Regulations, which rules and regulations themselves contemplate movement of those commodities over the highways of the Nation.

On the basis of the facts, conclusions, and observations set forth in his report, the examiner found:

1. That the dangerous explosives here considered are relatively stable in character and are designed to withstand rugged transportation conditions; that the transportation of dangerous explosives over the present highway system by properly qualified motor carriers under the Commission's Safety Regulations is not a particularly dangerous service; that the motor carrier safety record in the transportation of dangerous explosives is generally satisfactory; that the transportation of dangerous explosives by motor vehicle, relatively speaking, provides no greater hazard to the public than the transportation of such commodities by rail; and that dangerous explosives are suitable for motor transportation under the Commission's Safety Regulations, which regulations, as well as the national transportation policy, contemplate the movement of these commodities over the highways of the nation.

2. That it has not been demonstrated that the Commission should establish a general policy which would preclude the highway transportation of dangerous explosives by motor vehicle where otherwise required by the public convenience and necessity; and that, in the event further restrictions on the transportation of dangerous explosives by motor carriers are deemed necessary and desirable by interested persons in order to reduce the hazards involved and insure additional safeguards to the public, petitions for appropriate revision of the Commission's Safety Regulations should be filed with the Commission for that purpose, or for the institution of a general investigation into the motor transportation of dangerous explosives generally.

These findings have drawn vigorous exceptions from the opposing railroads, States, cities, and others.

The railroads strongly contend that the explosives under consideration are extremely dangerous in any form of transportation; that the examiner, the Department of Defense, and the applicants are not aware of the potentialities of the traffic; that the motor carrier safety

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record has not been satisfactory; that motor transportation is more hazardous than rail; and that we have no effective enforcement of our safety regulations and cannot in any real sense supervise the transportation of explosives over the highways, thus leaving such supervision to fall back on the State and local authorities, which are not in a position to handle such an undertaking.

Of similar tenor are the exceptions of A. A. A., the Brotherhood of Locomotive Engineers, the Triborough Bridge and Tunnel Authority, and certain States and cities. In addition, the States and cities complain that the examiner disregarded their position in the proceedings. Contending that no need has been shown for the proposed motor services in any event, they argue that the examiner did not give sufficient consideration to the dangerous character of the traffic; that these are proper proceedings in which to consider the views of persons interested in reducing the hazards in extensive grants of permanent unrestricted authority to transport dangerous explosives; that petitions for a revision of our safety regulations or for a general investigation, as suggested by the examiner, are entirely improper in these particular cases; that the traffic might well be moved under grants of temporary authority, contrary to the examiner's conclusions; and that they are not in a position to, or desire to, regulate the explosive traffic under their police powers. To illustrate, they say on exceptions:

> These interveners and others have indicated on this record their inability to handle the problem of highway transportation of dangerous explosives, at the local level. It is with some surprise, therefore, that we find the examiner suggesting that the States and cities must look to their local public police for such control of this commercial traffic as they desire. It is our understanding of the National Transportation Policy, calling as it does for cooperation between the Interstate Commerce Commission and the appropriate State authorities, that the States must make known their regulatory problems if the policy is to be effectuated. In such circumstances the answer would not be simply that they go home and rely on their own powers.

Numerous similar contentions are included in the other exceptions, and all have been carefully considered.

The Brotherhood of Locomotive Engineers also contends that the examiner erred in failing to make the specific findings requested by it or in deciding that they were without merit, and it asks us to make such findings. Insofar as the instant subject is concerned, the findings requested by it, generally speaking, deal with the alleged inherent hazards at highway grade crossings attendant to motor transportation of explosives, the conduct of the motor carriers and the supervision of their drivers, the possibility of collisions between trains and trucks which are transporting explosives, and the necessity for the denial of the instant applications because the permanent certification of the applicants would be unsafe and would create unnecessary peril

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to the life and limb of the railroad and motor-carrier employees, the traveling public, and the public generally. In this respect, however, we are keenly aware of the possibility of accidents at highway grade crossings, not only with respect to trucks transporting explosives, but in connection with all other motor vehicles as well. Statistics covering such accidents are set forth in our 68th Annual Report at page 113, and we see no need to discuss further whether the specific findings requested are justified or should be made. It seems sufficient to state that in our determinations we have given consideration to the highway grade crossing problem in its relation to the issues presented.

At this point, it should be observed that no one would seriously urge that a carrier be authorized to carry any commodity which, due to its inherent character, is so dangerous as to preclude the safe transportation thereof in our lanes of commerce. On the other hand, there are many explosives which, by reasons of their nature, manufacture, packing, and handling, are suitable for carriage over the railroads and the highways, under proper safeguards. Congress recognized the need for protecting the public against the hazards involved in the transportation of explosives as early as 1886; and in 1908, pursuant to the Transportation of Explosives Act, we issued regulations applicable to railroads. Since then, other legislation has been enacted under which regulations have been issued from time to time, and in 1934 we first issued regulations governing the transportation of explosives and dangerous articles by motortruck or other vehicles on the public highways. These regulations have been amended in various respects, and today comprehensive rules and regulations governing the transportation of explosives and other dangerous articles by rail and motor are in effect covering interstate and foreign commerce. These regulations and rules are referred to throughout this report as our safety regulations.

The operations of motor carriers are subject (1) to general regulations covering, among other things, the qualifications of drivers, driving of motor vehicles, reporting of accidents, parts and accessories necessary for safe operation, hours of service of drivers, and inspection and maintenance of motor vehicles, and (2) to regulations, over and above those applicable for other motor transportation, prescribing precautions to be observed in the transportation of explosives and dangerous articles, including regulations governing loading, unloading, marking of vehicles, procedures to be followed in the event of accident, packing, and the disposition of containers found leaking in transit. Similar regulations apply to rail transportation. The purpose of these regulations is to make the transportation of explosives as safe as possible by minimizing all possible hazards, and they were promulgated after long and careful study of the nature of the traffic

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and its relation to the public safety. The railroads and the respective applicants are fully cognizant of these regulations, and they make strong representations as to their careful observance thereof. All have safety programs, and some have regulations, in addition to those prescribed by us, to be observed in the handling of dangerous explosives.

The dangerous explosives here under consideration consist principally of munitions for the Department of Defense. These munitions must be susceptible to rough handling, and in many instances to rugged transportation, if they are to serve their purpose at the point of use. They are manufactured and packaged with this in mind, and care is taken by the defense authorities in preparing their shipments for movement by public transportation. Boxcars and trucks are inspected before loading to insure that they meet certain requirements, and the actual loading of the munitions into the equipment is carefully supervised. Once the traffic leaves the defense installations, our safety regulations are applicable to their transportation, whether it be by rail or motor.

Substantial quantities of explosives have been and now are moving by rail and motor, and the comparative safety record of each form of transportation has assumed some importance here. While no definite figures are shown of record on accidents in connection with the rail transportation of explosives, several rail witnesses testified that accidents have occurred to cars and trains while engaged in such transportation. Usually no fire or explosion resulted. Although there is no indication that there was any fatality attributable to an accident while transporting these commodities, serious accidents do happen in rail transportation, such as the one discussed in our 67th Annual Report at page 135. With respect to motor carriers, the tabulations in appendix I hereto show the accidents involving fire and/or explosion in the interstate transportation of explosives for the years 1948, 1949, 1950, and the first 8 months of 1951.

The railroads serve large and small cities, and in many instances their lines run through congested areas and by important structures. Likewise the highways utilized by motor carriers pass through large and small cities, congested areas, and over important bridges and by important facilities. The possibility of accidents in both rail and motor operations affecting property and person is ever present. A similar situation exists in connection with all forms of transportation, with other industries, and with the everyday movements of people in automobiles and in the ordinary activities of life. The fact that certain of the applicants in transporting explosives have violated our safety regulations and State laws is stressed by some of the opposing parties. These violations, however, are more properly for

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consideration in connection with a determination of an applicant's fitness. The railroads in transporting explosives and other dangerous articles also have violated our safety regulations.[a]

Some of the opposition stems from the assumption that the proceedings constitute a basis for a mass grant of certificates to transport dangerous explosives over wide territories. This is not the fact. We are charged with a special duty with respect to the transportation of dangerous explosives, and such duty includes not only the prescription of safety regulations and their enforcement, but also the requirement that certificates for the transportation of dangerous explosives be granted only upon a clear and definite showing of a need for the service and to properly qualified persons.

It is common knowledge that the present highway system is inadequate in some respects for modern day traffic, with a consequent increase in the number of highway accidents. Constant improvements in the highway system, however, are being made, and highway transportation has become a permanent part of our national economy. Some of those opposing the applications base their opposition on their belief that motor transportation of these commodities would add greatly to highway problems and accidents. There is no convincing evidence that this would be true.

While we concur generally in the examiner's findings, we see no need to make similar findings here. We are well aware of the hazardous nature of the traffic, and we are fully cognizant of the dangers attendant to the transportation of dangerous explosives by motor vehicle. Our 67th and 68th annual reports deal with such transportation, discuss our program to effectuate the safe transportation of the rapidly growing motor movement of these commodities, and conclude that transportation of explosives by motor vehicle can be performed with reasonable safety when the carriers comply with our safety regulations, use safe and well-maintained equipment, and employ adequately trained and supervised personnel. Some of our problems are similar to those encountered by the intervening States, cities, and other organizations, and it is our purpose to continue vigorously to carry on our safety program to the extent of our facilities.

We fully appreciate the position of those opposing the transportation of dangerous explosives on the highways and the granting of new

[a] For example, our 62nd Annual Report, 1948, pages 120–121, states:

"Service and explosives agents rendered 750 reports covering their investigations of explosives matters at 692 railroad points, 3 motor carriers, and 55 industries. These reports indicated full compliance with regulations in 294 instances. The violations consisted of 144 failures to furnish the train and engine crews with notice that their trains included cars containing explosives; and failing to keep file copies of notices at point of issuance, or neglect to number such notices; 50 were for improper placement of cars in trains; 284 consisted of placard violations and billing irregularities; and 8 covered miscellaneous irregularities."

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authorities for the carriage of these commodities. While we are not convinced that authority to transport dangerous explosives over the highways should be denied in these or other proceedings because of the hazards involved, we believe the records herein are such that we should give serious consideration to the question of whether, as a matter of general policy, we should continue, as in the past, to grant unlimited certificates and permits to transport dangerous explosives. Some suggest that only temporary authority should be granted to transport dangerous explosives and then only where it is shown that the national defense effort requires the service. This suggestion, however, overlooks the fact that under the act we may grant temporary authority to a motor carrier only for a limited period.

In some few instances in the past, limited-term certificates or permits have been issued. And in *Burgess Extension—Atoka, Okla.*, 62 M. C. C. 253, we discussed at some length our power to issue limited-term certificates and permits, stating, at page 257:

> Thus, we are convinced that we may rightfully, and, in fact, must, issue limited-term certificates when the surrounding circumstances indicate that the public will best be served by such action.

As hereinafter seen, we conclude, as did the examiner, that there is a need for certain of the proposed transportation of dangerous explosives. Question then arises as to whether we should issue limited-term certificates to render the service.

We have heretofore concluded that "we are warranted in these extraordinary proceedings in utilizing all of the information made available to us, for, as indicated, public convenience and necessity in its broadest sense embraces all phases of safety and the public interest." The factor of safety in the transportation of dangerous explosives is an extremely important one, both from the standpoint of this Commission, the carriers involved, and the general public. In view of the rapid expansion in motor transportation of dangerous explosives in recent years, we have given the matter special consideration, and we have worked closely with the Department of Defense to improve our safety regulations and to promote the safe transportation of this traffic. However, we are now convinced, based on the records herein, that the public interest will best be served by a more strict approach to the problem of the safe transportation of dangerous explosives and compliance by the carriers with our safety regulations. To this end we believe that we rightfully may and should issue limited-term certificates and permits to all applicants for authority to transport dangerous explosives. The issuance of such limited-term certificates and permits will enable us to review a carrier's safety record when and if renewal of such operating authority is sought. Conditions requiring motor service in the transportation of explosives change

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from time to time; and where a need exists today, there may be none for an authorized service at a particular time in the future. Outstanding dormant and unused certificates and permits are undesirable from a regulatory standpoint and are not in the public interest. Some difficulties may arise in applying this policy to applications wherein authority is sought to transport general commodities, including dangerous explosives, as, for example, over regular service or alternate routes. In such instances, however, the certificate or permit granted, insofar as it authorizes the transportation of dangerous explosives, can be restricted to expire on a specified date.

In the instant proceedings there is no evidence as to how long the need for motor service will continue. Where a need is found to be established herein, we believe that the certificates granted to conduct the service should be conditioned to provide for their termination at the expiration of 5 years from the effective date thereof. Similar action will be taken in other proceedings, unless the facts warrant a lesser period.

The fact that a grant of authority may be made in the face of the opposition of States, cities, and others, such as expressed here, based on the hazardous nature of the commodities and existing highway and traffic conditions, does not mean that we are not cooperating with the appropriate State authorities. We also have an obligation under the act to develop and preserve a national transportation system by water, highway, and rail adequate to meet the needs of our commerce and the national defense. In disposing of the instant applications, we have given careful consideration to all of the opposing evidence, but this evidence must be weighed in the light of all facts of record to determine where public convenience and necessity lies. Where authority is granted, the resulting operations will be subject to local traffic laws and regulations; and States, cities, and other authorities, to the extent consistent with their powers, may adopt such laws and regulations governing the movement of the traffic through or within their territories and in and over their facilities. It is our intention, of course, to continue our efforts to safeguard the transportation of explosives in every possible way, and we shall, where necessary and desirable, prescribe additional safety regulations looking to that end. If any of the parties have suggestions for augmenting our present regulations, they will, if submitted to us, receive careful consideration.

PUBLIC CONVENIENCE AND NECESSITY

The authority sought and the evidence presented by each applicant, discussed in appendix A to the examiner's report, deals with the applicants' present and proposed operations, and the fitness and ability of each to perform the proposed services. No exceptions were filed

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to the factual statement set forth in that appendix, except a minor one which need not be discussed in view of our conclusions. The facts there disclosed have been fully considered by us, and we see no need to attach the appendix to this report.

The Department of Defense, on behalf of the Navy, the Air Force, and the Army submitted evidence dealing with its military needs for motor service. The position taken by those opposed to the certificates sought and their principal arguments have been discussed and disposed of to some extent in connection with the issue of "Safety." They need not be repeated here.

The examiner recommended (1) that Riss be granted a certificate to transport class A, class B, and class C explosives, ammunition not included in such classes, and component parts of such explosives and ammunition, over irregular routes (*a*) between Chicago, Ill., and the Naval Ammunition Depot at Crane, Ind., on the one hand, and, on the other, the Naval Ammunition Depots at Hingham, Mass., and Earle, N. J., and (*b*) between the Naval Ammunition Depots at Hingham and Earle; (2) that six of the other applicants be authorized to serve the Pauline depot in off-route or intermediate point service in connection with their regular-route operations to and from Topeka, in the transportation of general commodities but not including dangerous explosives; and (3) that the applications in all other respects be denied. Exceptions to these recommendations were filed by certain of the applicants and by a number of those opposing the applications. Briefly, the applicants' exceptions request that their applications be granted in whole or in part, while those opposing the applications ask that they be denied in their entirety. No exceptions were filed by the respective applicants to the examiner's recommendation (1) that the applications in Nos. MC–1091 (Sub-No. 4), MC–3261 (Sub-No. 16), MC–38183 (Sub-No. 29), MC–58948 (Sub-No. 53), MC–70451 (Sub-No. 128), and MC–111700 (Sub-No. 5), be denied in their entirety; and (2) that the applications in Nos. MC–730 (Sub-No. 25) and MC–954 (Sub-No. 34), to the extent authority is sought therein to transport dangerous explosives, also be denied. In the circumstances, we see no need to consider further such applications or portions of applications, and they will be denied.

At this point several important questions raised by the exceptants merit discussion. Riss points out that we have repeatedly stated that there are three elements involved in the determination of public convenience and necessity: namely, (1) whether the new operation will serve a useful purpose, responsive to a public demand or need (shippers' need for the proposed service), (2) whether the service can and will be provided as well by existing carriers (adequacy and character of existing service), and (3) whether the new operation or service can

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be performed without endangering or impairing the operations of existing carriers, contrary to the public interest (effects on existing carriers and the national transportation policy). It contends that the examiner did not consider the evidence solely in the light of these three elements, but gave consideration also to the so-called safety evidence and was influenced thereby in making his determinations of the extent of the need shown. Such action, Riss contends, constituted serious error on the part of the examiner. We do not agree. While the elements set forth by Riss are those generally used to test public convenience and necessity, such general use of the elements specified by Riss does not preclude consideration of other factors in determining public convenience and necessity.

We would not be discharging our duty under the act and the national transportation policy if, in our handling of the instant applications for certificates to transport dangerous explosives, we did not give consideration to any new matter relating to their carriage on the highways. The new matter here deals with the opposition to the applications on the grounds of safety. This opposition is strong and is pressed with vigor and insistence. It appears to stem principally from the fact that originally a large number of applications for authority to transport dangerous explosives were presented, and the fear that, if granted, the already crowded highways would be further congested with numerous trucks carrying explosives. On the other hand, the motor carriers apparently believe that consideration of the safety evidence will provide a precedent for the introduction of like evidence in other proceedings, with a resulting burden that individual motor carriers cannot meet in prosecuting applications.

We foresee no such result. It has been indicated heretofore that dangerous explosives may be transported with reasonable safety on the highways under certain circumstances and conditions, and we deem these proceedings as controlling of that issue. The parties have been fully heard and a plethora of information has been received. Consequently, we see no need for the receipt in the future of similar information, except under unusual or special circumstances. Otherwise, the handling of our applications for authority to transport explosives would entail lengthy hearings, would become burdensome to the parties, and would unduly delay the disposition of requests for operating authority.

Question has been raised by several of the applicants and others as to whether the Department of Defense should be given special consideration as a shipper. One of the applicants points up this question on exceptions, as follows:

> Private shippers, though unwilling to inform their competitors of the amount of business they do, realise that in order to have authority granted to the

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carriers whom they support, they must reveal tonnage or frequency of shipment figures. However, neither the Commission nor the applying motor carriers, for security reasons, can elicit such testimony from the military witnesses. As a result of such circumstances, applicant as well as the other carriers in these proceedings are placed in a very difficult position. Not only are the carriers faced with a difficult task to show the extent of need, but necessarily any determination by the Commission as to the amount of motor carrier service which should be made available to the military is based upon a reliance on its integrity and wisdom. Thus, because of the lack of tonnage figures, the Commission may well be granting either too little or too much service. But one consideration must be paramount and that is that the military be granted a sufficient amount of service to eliminate any factor of guesswork and any and all doubts as to the adequacy of service must be resolved in favor of granting more service rather than too little. Therefore the Commission should recognize this essential difference and give emphasized credence to what little the military is allowed to say.

While we recognize certain disabilities of the military in the presentation of evidence, we must, in order to carry out our duty under the act, be furnished with sufficient facts on which to base our conclusions with respect to the need for motor service. Unless such facts are made available, we cannot act intelligently in disposing of the issues, and particularly, where as here, the problems presented are varied, complicated, and controversial. Where necessary facts are lacking, we are not warranted in making allowances for the failure to produce them or in according the Department of Defense or any other shipper special consideration, except perhaps under some unusual circumstances.

At this point we will review briefly the evidence presented by the opposing carriers, as we believe it will facilitate some of our discussion relative to the asserted need for the proposed services. The railroads offer a nationwide, integrated transportation system with service available to and from all points and installations mentioned in the evidence offered by the Department of Defense, and they are ready and willing to provide transportation for that Department. Generally, shipments between military installations require the services of more than one railroad. Special train service, upon request, is provided for one or more cars of explosives, and is available at any time, the transit time being adjusted so as to meet the shipper's requirements as nearly as possible. Shipments moving by rail may be reconsigned or diverted easily while en route for the location of the shipment is always known, and on request the railroads provide daily reports of the location of cars. The railroads have extensive safety programs governing their operations, and substantial sums of money and uninterrupted efforts have been and are continuously put forth into such programs, one feature being the safe transportation of explosives.

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Large volumes of explosives were transported by the railroads during World War II, with very few complaints as to the service rendered. They were also called upon in 1950, and since, to transport substantial quantities of explosives, and in some instances larger quantities were transported than in comparable periods of World War II. The efficiency of rail operations also has increased in the past few years through the use of new, larger, and more modern equipment.

The railroads represent that any diversion of the high-rated explosives traffic from them to the trucks will seriously impair their ability to provide essential services, and will require them to seek rate increases in order to maintain their plants and services; that this traffic is especially needed to justify the continued maintenance of special facilities provided for its movement, and to provide for the training and experience of personnel to handle it; that any loss of revenue from such traffic would have to be regained if the railroads are to be able to provide satisfactory and efficient service; and that virtually the only way this could be done would be to increase the rates on their remaining traffic. Various shippers and organizations of shippers of low-rated commodities also oppose the applications because they fear that the loss of revenue from explosives would be a factor inducing the railroads to seek rate increases on their traffic.

The volume of explosives transported by the individual railroads has varied between peacetime and emergency periods. The gross freight revenue of the railroads from ammunition and explosives by quarterly periods from January 1, 1949, to June 30, 1950, averaged 4.5 million dollars per quarter. In the four quarters after June 30, 1950, the revenues from explosives and ammunition averaged 30 million dollars a quarter. The 30 million dollars per quarter revenue amounted to about 1 percent of the railroads' total revenue, indicating the importance of the traffic to them.

During World War II the railroads carried over 90 percent of the military freight shipments with a relatively small number of complaints. Since the needs of the country for rail service in time of emergency are so great, the railroads represent that they must have sufficient traffic at all times in order to be in a position to carry all of the traffic required during an emergency; and that diversions of traffic such as is contemplated under the instant applications would reduce the amount of freight traffic available to the railroads and thus tend to weaken the entire rail system.

A number of motor carriers, including some of the applicants, oppose the applications in whole or in part. Their operations and facilities are discussed in detail in the examiner's report, and their ability

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to render any of the proposed services will be given consideration, where pertinent, in connection with our later discussions.

The Department of Defense is the principal supporter of the authorities sought and it presented 3 witnesses, 1 each from the Navy, the Air Force, and the Army. In accordance with established policy, their testimony was not given in support of any particular application, but related to the needs of that Department for additional motor-carrier service, and there is no inference that one carrier is preferred over another. All of the traffic to be transported would move on Government bills of lading or on bills of lading later converted to Government bills of lading.

Navy.—The Navy maintains important installations between which it ships explosives, ammunition and component parts thereof, and also other commodities, by rail and motor. The location, functions, and other data relating to certain of these stations are detailed in the examiner's report. Briefly, there are naval installations at or near Indian Head, Md., Hastings, Nebr., McAlester, Okla., St. Julien's Creek and Yorktown, Va., Crane, Earle, and Hingham.

The Navy desires motor-carrier service for the transportation of ammunition, explosives, and component parts thereof (1) between its installations at Crane, McAlester, and Hastings, on the one hand, and, on the other, the installations at Hingham, Earle, Indian Head, St. Julien's Creek, and Yorktown; (2) between the installations at Earle, on the one hand, and, on the other, the installations at Hingham, Yorktown, and St. Julien's Creek, and (3) between the installations at Crane and Hastings. Single-line or a coordinated interline service in which trailers are operated through to destination with no transfer of lading or undue delay en route is sought. Transfer of lading is not permitted for reasons of safety and security of classified material, and to prevent delays. As storehouses and magazines at the various installations are in many instances not accessible to rail lines, additional handling is required for rail shipments. Additional handling is objectionable because of safety, of the loss of time in transit, and of the economic loss in money and manpower. Representations are made, unsupported by specific instances, that it is frequently necessary to make expedited shipments from one installation to another because of urgent requirements for items in short supply, although there is some storage capacity at all of the considered installations; and that, in such situations, the failure of a shipment to arrive within the required time increases costs, delays ship sailings, and may hamper the effectiveness of naval operations.

The military traffic policy provides that the least costly means of transportation must be used for all shipments if all other factors are equal. The Navy is interested only in obtaining satisfactory motor

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service which fulfills its requirements and is not concerned which carrier or group of carriers is authorized to perform the service. It has no preference between single-line service or multiple-line service, provided the service fulfills its requirements. For joint-line service to be satisfactory, equipment must be interchangeable and available at all times, and the shipments must not be transferred from vehicle to vehicle. Joint-line service has been found to be adequate in some instances, and inadequate in others.

The Navy ships explosives, ammunition, and components thereof from Crane, McAlester, and Hastings to the specified eastern installations. Some of these items are returned from the eastern points for reworking, but the Navy's primary interest is in eastbound service. There are frequent shipments of explosives from Crane to Earle on which 3-day service would be desired and others on which 4-day service would be satisfactory. The Navy's representative believes that truck shipments should provide fourth-morning delivery between these points, but that occasionally 3-day service would be desired. In the period between January and June 1951, about 99 percent of the movements between Crane and Yorktown were by rail, 88 percent between Crane and Hingham were by rail, and 70 percent between Crane and Earle were by rail. The remainder of the shipments between these points was by truck. At least 60 percent of the shipments between McAlester and the eastern naval installations was by rail; between Yorktown and the other naval facilities most shipments moved by rail; and between Indian Head and the other naval facilities, the shipments were predominantly rail.

There have been movements between Hastings and Crane. During the period from January to June 1951, the Navy shipped 920 tons of explosives, ammunition, and ammunition components from Hastings to Crane by rail and 2 tons by truck, and 45 tons of primarily inert material from Crane to Hastings by rail and 190 tons by truck. Multiple-line motor service was used from Crane to Hastings in this period, and the service provided was satisfactory and adequate. There was a large truck movement from Crane to Hastings in September 1951, and a future movement in both directions is anticipated.

Riss' service under permanent and temporary authority [4] and combinations thereof has been widely used by the Navy. The service so provided since January 1950 has been satisfactory, and sufficient equipment has been supplied. In the two-line haul from Hastings to eastern

[4] Riss' temporary authority covering the transportation of dangerous explosives in No. MC-200 (Sub-No. 60-TA), has been substantially restricted as the result of our decision in *Riss & Co., Inc., Interpretation of Temporary Authority*, 54 M. C. C. 531, and such temporary authority has been extended until final determination of No. MC-200 (Sub-No. 54.)

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destinations, the service has not been satisfactory in all instances, because equipment was not furnished as requested; but no check was made to ascertain which of the two carriers (Riss or Union Transfer Company, hereinafter called Union) was responsible for supplying the equipment. The volume moved between these points is increasing, and in the future there will be movements in both directions. Some shipments have moved between Earle and Yorktown and Hingham. Normally third-morning delivery would be desired between Earle and Hingham.

The Navy representative made a random check of shipments of explosives and ammunition moved by rail and truck between the points here considered. The check included movements between some of the points between which service is desired and did not purport to be complete as to the number of shipments involved. The following table sets forth this information. The transit time shown is the average for the number of shipments listed, which are all that were checked.

Naval installations	Rail shipments		Truck shipments	
	Number	Transit time	Number	Transit time
		Days		*Days*
Hastings and Indian Head	4	12	No data	No data
Yorktown	15	10	No data	No data
St. Julian's Creek	26	13	20	8
Crane	3	6	No data	No data
McAlester and Earle	10	11	No data	No data
Indian Head	30	12	25	7
Yorktown	28	11	No data	No data
St. Julian's Creek	29	13	27	8
Crane and Hingham	15	10	10	4
Earle	11	9	10	4
Yorktown	25	7	11	4
Earle and Hingham	20	6	No data	No data
Yorktown	25	7	No data	No data

The Navy witness believes that the transit time shown represents generally the average times between the named points.

Although shipments will move between the named installations in the future, the volume of traffic that has moved in the past or that will move in the future is not shown. It is said that information as to volume of past shipments is not of a type that may be made public, and that information as to future shipments would be restricted even if known by the Navy. Shipments transported by Riss are shown in appendix C to the examiner's report and indicate to some extent the Navy's use of motor-carrier service between the points.

The Navy has used the services of many motor common carriers for the transportation of dangerous explosives and general freight, and has found that such carriers are able to provide satisfactory service. Vehicles used for transporting explosives are inspected at the instal-

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lations to insure that they comply with our safety regulations and with the regulations prescribed by the Navy. Any defects discovered must be repaired before the vehicle is loaded. Drivers are instructed about the hazards of the load before they start the trip. Leased equipment may be used, but no trip-leased vehicles may be utilized in the transportation of explosives. The Navy has no preference between the use of company-owned vehicles or vehicles operated under long-term leases. Maps of routes to be followed in transporting explosives must be filed by carriers with the Defense Department in Washington before the routes are used. No inspection or checks are made after a vehicle leaves the point of loading to insure that specific routes are followed or that Navy regulations are observed.

Any additional motor-carrier service which is made available would be used to supplement and not replace rail service. When special handling has been requested of the railroads, the service in most instances is said to have been generally satisfactory. The movement of explosives has been increasing. Usually large volumes are moved in each shipment, and a substantial amount of equipment is needed at one time. Under Navy policy certain types of ammunition are supposed to be moved exclusively by rail, but in emergencies these classes have been shipped by truck. The items which are susceptible of movement by both rail and truck are those in which a heavy coating of steel surrounds the explosives, or where there is primarily a fire hazard rather than an explosion hazard.[6] Class A, Class B, and Class C explosives are included in this group. One of the main hazards in connection with the over-the-road movement of explosives is fire, which is believed to be minimized in such commodities. The support of a need for additional motor service as above described is based on complaints of repeated missing of delivery date deadlines and other matters dating back to 1949 from the various installations concerning the service presently available. Facts covering specific instances involving such complaints, however, are not shown of record.

Many shipments of explosives and ammunition are transported which are not of an urgent nature and require no special handling or delivery on or before a specified date. Rail service has been used for such shipments and has been satisfactory to the Navy. Other shipments moving in both large and small quantities between points both near and distant require arrival at or before specified times, or in some instances as soon as possible. Rail service has been used for these shipments, and in some instances the service provided has been

[6] Examples of explosives which may be moved by rail or truck are: Small arms ammunitions, detonating fuses, primers, pyrotechnics, cartridges, semifixed, bag charges (smokeless powder and a little black powder), fixed cartridges, explosive projectiles, rockets, rocket propellant fuses, and armor piercing and semiarmor piercing bombs.

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satisfactory; in others it is characterized as not satisfactory. Some average rail transit times have been shown for shipments moving between certain of the points for which the Navy expressed a desire for motor-carrier service. The rail transit times, although satisfactory for many of the shipments, are said to be unsatisfactory for those as to which the Navy desires an expedited service to meet a delivery deadline. On such shipments motor-carrier service is desired in order that on-time delivery may be effected. In this connection, the rail carriers point out that their special service is available for such shipments; and that there is no showing of specific instances where rail shipments failed to meet deadlines.

While the Navy has had the service of Riss available for several years and has used it for many shipments, the railroads also have transported large quantities of explosives in recent years. In view of this and the statement of the Navy witness that motor-carrier service would be used to supplement rail service, it does not appear that motor-carrier service is intended to supplant rail service. Since the Navy is willing to use single- or multiple-line service for its shipments, if the lading is not physically transferred en route and the service is otherwise satisfactory, the examiner gave careful attention to motor carriers which are authorized to provide part or all of the desired services, and could, by interchange of trailers with other carriers, which interchange they have made or indicate they are willing to make, participate in the considered movements. It appears that these carriers have in the past provided service for the Navy, that some are still providing service, and that the Navy apparently has not found their services unsatisfactory.

The examiner's analysis and conclusions respecting existing motor carriers, as set forth in his report, are reproduced in appendix II hereto.[6] The analysis shows the points and the carriers authorized to provide the desired services over all or part of the distance between the named points. The carriers listed are authorized to transport dangerous explosives and in some instances other related commodities. All are motor common carriers, except Baggett, a motor contract carrier.

On the basis of his analysis, the examiner found that a need for service only had been established between Chicago and Crane, on the one hand, and Earle and Hingham, on the other, and between Earle and Hingham. To these findings, exceptions are taken by the rail-

[6] The correct names of the carriers specified by the examiner to the extent not heretofore given, follow the abbreviations used by him and are: B. B. & I., B. B. & I. Motor Freight, Inc.; Hayes, Hayes Freight Lines, Inc.; Mid-Continent, Mid-Continent Freight Lines, Inc.; Tri-State, Tri-State Warehousing & Distributing Co.; Watson, Watson Bros. Transportation Co., Inc.; Whitten, C. L. Whitten Transfer Co.; and Yellow Transit, Yellow Transit Freight Lines.

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roads and others opposing the applications, by the Department of Defense, a number of the applicants, and the A. T. A. Briefly, those in opposition contend that the rail service is completely adequate and sufficient; and that the evidence does not establish a need for motor service between any of the points involved. The railroads say that the Navy's showing as to transit time is incomplete and unreliable; that no specific examples of repeated missing of delivery datelines were given by the Navy witness and that reliance by the examiner on such evidence was in error; that there is no showing of any specific instance where regular or special rail service was or is not satisfactory; that the Navy is not entitled to motor service in addition to satisfactory rail service; and that the examiner gave too much consideration to the witness' general testimony which was unsupported by any specific facts.

On the other hand, the Department of Defense and the applicants filing exceptions contend that authority should be granted between all points to which service is desired by the Navy; that motor service is essential to Navy operations; and that the rail and existing motor service is not adequate to meet the Navy's needs. In addition, they say that most of the motor carriers mentioned by the examiner as being able to provide service between certain points did not express opposition to the applications or indicate any willingness to provide the desired services; and that the examiner accepted the existing carriers as being in a position to provide service, without any showing that they could or would provide the kind of service required by the Navy. Riss in particular objects to consideration of these carriers in determining public convenience and necessity, urging that the examiner went beyond the records to ascertain the operating rights of certain motor carriers, and that he assumed, without supporting evidence, that the motor carriers specified by him could and would provide satisfactory service, especially in the absence in the record in some instances of their operating authority or evidence of any arrangements for interchange of equipment without transfer of lading or delay in transit. Riss also asserts that the Navy needs the service which it has been rendering under temporary authority; and that the operations performed thereunder are entitled to great weight in ascertaining the Navy transportation requirements between the named points.

The Department of Defense, in commenting on the grant recommended, requests that in all events it be modified to include a small radius of each of the installations specified therein in order to permit interchange of equipment by the motor common carriers outside such installations, as its regulations now prohibit interchange within military installations. Hughes, one of the carriers mentioned by the ex-

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aminer as being in a position to participate in interchange service, also requests that it be granted authority to provide such a service at points within 2 miles of the Blue Grass Ordnance Depot. It now holds temporary authority to interchange at points outside that depot, and has pending an application for corresponding permanent authority in No. MC–102682 (Sub-No. 228).

The extent of the Navy's desire for service already has been set forth, along with the motor-carrier service now permanently authorized. Apparently some is or would be single-line, other multiple-line service. The question of whether adequate motor transportation is available or could be made available by the carriers mentioned by the examiner is difficult to ascertain, in view of the lack of evidence in many instances of a prearranged or coordinated service between the points. This situation is reflected generally in much of the testimony, and we lack desirable information which is pertinent to the question. The examiner dealt with the matter to the extent possible on the present records, but we are not satisfied that the complete picture of the existing service has been presented. Until it is made available, we are compelled to act on the present facts, in the light of the conflicting contentions of the parties.

At the outset, we must conclude, on the basis of the records, that rail service alone is not entirely adequate to meet the needs of the Navy for the reasons heretofore discussed. Accordingly, authority should be granted to provide motor service for the Navy between those points where it is clearly shown there is no existing or authorized motor service, and where there is a reasonable showing of a need for such service in the public interest. In those instances where existing motor carriers hold authority under which there is the possibility that the desired service could be rendered, as outlined by the examiner, we are not inclined to grant additional authorities to transport *dangerous explosives* until and unless it has been established with preciseness and definiteness that the existing carriers cannot or are not willing to provide reasonable and adequate service. In this connection, it should be noted that the burden of proof is upon the applicants to establish a need for their proposed services, and that we have consistently held that existing carriers are entitled to transport, without the competition of additional carriers, all available traffic which they can handle economically and efficiently. The fact that existing carriers are not participating in the traffic provides no sufficient reason for depriving them of potential traffic they normally could expect to handle. Here there are authorized carriers which appear to be in a position to provide the desired services; and we are not warranted in disregarding them.

On the other hand, between (1) Earle and Hingham, (2) Crane, on the one hand, and Earle and Hingham, on the other, (3) Hastings,

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on the one hand, and Earle and Hingham, on the other, and (4) McAlester, on the one hand, and Earle and Hingham, on the other, no single- or multiple-line motor carrier service appears to be available. Except between Earle and Hingham, permanent motor-carrier service, however, is authorized to and from one of the western points specified and certain points which are intermediate to the other specified eastern points. Since the hearings herein and pursuant to the findings in No. MC–89778 (Sub-No. 36), *Baggett Transp. Co. Extension—Crane, Ind.–Earle, N. J.*, 63 M. C. C. —, (not printed in full), decided November 15, 1954, Baggett has been issued permits to transport dangerous explosives and related commodities, over irregular routes, between (1) Crane and Hingham, (2) Crane and Earle, (3) Crane and Yorktown, and (4) Earle and Yorktown.

As seen, the Navy desires motor-carrier service between Hastings, on the one hand, and Earle and Hingham, on the other, and an indication of the volume of the motor traffic moving between these points may be obtained from appendix C of the examiner's report. On traffic to and from Hastings, Union has been used in a joint-line service for a portion of the distance. While the service which has been provided in combination with Riss has not been completely satisfactory to the Navy because equipment has not always been provided when desired, steps have been taken which Union believes will correct this situation. A grant of authority between Hingham and Earle, on the one hand, and, on the other, points in the Chicago area would make multiple-line service available between Hastings and Hingham and Earle, and such authority will be granted. Shipments have been interchanged in both the Chicago and Omaha areas in the past, but there is no reason to grant authority which would make possible the continuance of interchange in more than one general area.

Some service is presently available between Crane and eastern points, but none is available to or from Hingham or Earle, except the motor contract service recently authorized to Baggett. There appears to be no reasonably direct motor common carrier service available for even part of the distance between these points which could be used in providing a multiple-line service. Shipments have been moved by Riss between Crane and Hingham, and between Crane and Earle. The quantities have varied, but in most instances substantial quantities moved as indicated in appendix C to the examiner's report. A need for motor common carrier service between Crane and Hingham and Crane and Earle is established, and such authority will be granted, particularly in view of the need for interchange facilities for motor common carriers at Crane.

The Navy desires service between McAlester and the various installations on the eastern seaboard as heretofore described. The ex-

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tent of the use made by the Navy of the service of Riss may be determined from appendix C to the examiner's report. Service is authorized between some of these installations, and a need for service is established only to and from the eastern installations at Hingham and Earle. Several carriers are authorized to serve McAlester. Mid-Continent holds authority to operate between McAlester and points in southern Indiana, including Crane, and Riss holds authority to operate between McAlester and the Chicago area. Since authority is being granted herein to operate between both the Chicago area and Crane and the eastern points above specified, it is unnecessary to grant any additional authority to operate to and from McAlester. Use of a route between McAlester and eastern points with an interchange at Crane or in the Chicago area is reasonable.

No motor-carrier service is available between Earle and Hingham for all or part of the distance; and Navy shipments have moved between these points, as indicated in appendix C to the examiner's report. Shipments which moved by rail are shown to have an average transit time of 6 days, but this is said to be too slow for many shipments as third-morning service would frequently be desired by the Navy. A grant of motor-carrier authority between Earle and Hingham would make such service available, would not duplicate any motor-carrier service, and would fulfill a Navy need. Authority will therefore be granted between Earle and Hingham. In addition, all of the grants made will include points within 3 miles of the authorized naval installations in order that motor common carriers will be able to interchange traffic at such points.

Summarizing, we believe that the foregoing grants of authority are warranted by the evidence; that although authority to perform this motor service should not be denied because of the character of the traffic to be transported, the public interest will best be served by the issuance of limited-term certificates authorizing such service; and that the operations authorized would not have a materially adverse effect upon the operations of the protesting rail and motor carriers or jeopardize their ability to render the public an adequate and efficient service, or would contravene the provisions of the national transportation policy.

Army.—The Army supplies the Air Force with most of its ammunition, and references herein to the Army will include the Air Force, unless otherwise noted. The policy of the Army is to support applications for additional motor-carrier service, but not specific applicants, where its investigations develop that its needs are not being met by presently available permanently authorized transportation facilities. After such investigation, it has concluded that it needs additional motor-carrier service for the transportation (1) of ammunition and

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explosives, and component parts thereof, between points in Ohio, on the one hand, and, on the other, Army and Air Force installations in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, and (2) of ballistics samples in less-than-truckload quantities from the Sioux Ordnance Depot at Sidney, Nebr., to Jefferson Proving Ground near Madison, Ind., serving certain intermediate points.

The location and other data pertaining to its installations in the States named are set forth in the examiner's report. Briefly, there are installations, which ordinarily ship or receive ammunition and other explosives, at or near Ravenna, Sandusky, Columbus, Port Clinton, Lima, Lordstown, and Toledo, Ohio; Romulus, Schenectady, and Troy, N. Y.; Dover, Belle Mead, Pedricktown, and Metuchen, N. J.; Chambersburg, Philadelphia, and Harrisburg, Pa.; Ayer, Maynard, Springfield, and Watertown, Mass.; Aberdeen, Army Chemical Center (21 miles northeast of Baltimore), and Baltimore, Md.; and Lewes, Del. All of these installations are served by rail lines.

Shipments of explosives and ammunition are said to be made between Army installations in Ohio, on the one hand, and, on the other, Army installations in Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, and Maryland, including those installations previously described, and in addition all other Army installations in these States. The witness was unable to recall the name of any other points to or from which shipments have been made, but was certain that there are others. Shipments are also made between points west of Ohio, none of which was specified, on the one hand, and, on the other, points in the States named east of Ohio. Motor service is desired at all points in Ohio in order (1) to provide service between installations in Ohio and the named eastern States, and (2) to facilitate interchange of shipments between motor carriers, at points convenient to them, on shipments which originate at or are destined to points west of Ohio and which are destined to or originate at points east of Ohio. The motor service between points in Ohio, on the one hand, and, on the other, points west of Ohio is satisfactory, both as to quality and quantity; and the Army believes that, by interchange in Ohio, satisfactory service could be provided on shipments moving between points west of Ohio and points in the eight named eastern States. Such interchange could occur at Akron, Cincinnatti, Cleveland, Columbus, Dayton, Sandusky, Springfield, and Toledo, Ohio, but also might be made at other points.

The Army representative had records of movements made between July and September 1951, from Seneca Ordnance Depot (Romulus) to Cincinnati, Ohio; from Letterkenny Ordnance Depot (Chambersburg) to Wright-Patterson Air Base, near Dayton, Ohio; from

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Raritan Arsenal (Metuchen) to Ravenna; and from Ravenna to Pine Camp, N. Y., Letterkenny Ordnance Depot, and unspecified points in Maryland. He had no record of movements to or from Delaware, or movements from Massachusetts, Connecticut, Rhode Island, and Delaware, or from New Cumberland, Pa., Schenectady, or Watervliet Arsenal (Troy) to Ohio in this period. No records of shipments during other periods of time were available. The witness was of the opinion, however, that there had been a fairly substantial movement to New York and New Jersey from Ohio points, but he could not specify the destinations or the volume of traffic which had moved between any of these points.

If the Army had motor-carrier service equivalent to that presently provided under temporary authority, whether performed by Riss or some other carrier or carriers, such service would be adequate, and so far as presently known would meet every requirement. The type and amount of service desired and the exact points between which shipments now move are not shown. No evidence was presented concerning the volume of shipments which have moved between any points, the kind of transportation used, the amont of equipment required, the approximate time in transit by any form of transportation between any points, or what a satisfactory transit time would be.

The motor service presently available is claimed to be generally unsatisfactory, because circuitous routings are required and no satisfactory, coordinated interchange service is available, and because at times difficulty has been experienced in obtaining equipment. Rail service is represented as not always satisfactory, because it frequently involves additional handling, increased handling cost, and an increase in potential hazards; but the Army's position that additional motor service is required is not based on additional handling costs. It is not the Army's desire to supplant rail service with motor service, but only to continue to have as much service, both rail and motor, including that under temporary authority, as is now available. The percentage of the shipments presently moving by rail or truck is not of record.

The Army has no objection to a coordinated joint-line motor carrier service if thereunder a satisfactory service is provided. Single-line motor carrier service is not shown to be available between points in Ohio and points in the other named States, except the service of T. M. Zimmerman Co., hereafter called Zimmerman, from Letterkenny Ordnance Depot to points in Ohio, and of Whitten between points in Ohio and Pennsylvania, through Nemours, W. Va. The service of Zimmerman has been adequate and satisfactory from the Letterkenny Depot to points in Ohio, but the route used by Whitten is circuitous.

As stated, satisfactory coordinated multiple-line service is claimed not to be available. In virtually every instance circuitous routings

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are said to be required on movements from Ohio to the East, or particularly through the Cleveland or Buffalo gateways. Although some service is said to be available to points in New York, difficulty has been experienced in obtaining equipment at installations in western New York State. The witness believes that the number of carriers participating in a multiple-line movement is no indication that the service will or will not be satisfactory, and he assumes that any carrier granted authority would interchange equipment with the existing carriers operating between Ohio and points west of Ohio, and that such interchange would be made at points throughout Ohio. The existing motor carriers which now are able to provide service over circuitous routes are not identified, and there is no information of record as to the scope of their operations, thus making it impossible to determine whether they are in a position to provide adequate service.

At the time of the hearings, Riss held extensive temporary authority to transport explosives, but its operations under such authority, to the extent they concern areas in which the Army indicated a desire for service, have been rather limited. Appendix D of the examiner's report shows the service in the transportation of explosives performed by Riss as here pertinent. There are only a few points mentioned by the witness for the Army which were served by Riss, such as Ravenna Arsenal and Erie Ordnance Depot in Ohio, Letterkenny Ordnance Depot in Pennsylvania, Seneca Ordnance Depot in New York, Springfield Armory in Massachusetts, Delaware Ordnance Depot and Raritan Arsenal in New Jersey, and Aberdeen Proving Ground and Army Chemical Center in Maryland.

As seen, there is motor-carrier service available in portions of the considered areas. Although some of this service is said to be circuitous, and, for that reason, not too desirable, there is no definite showing that such service is too slow to meet the needs of the Army or is otherwise unsatisfactory. Carriers authorized to provide portions of the desired service ordinarily should be used by shippers and their service found unsatisfactory before additional service is authorized; and such carriers should not be subjected to competition where the service they provide has not been shown to be inadequate.

Railroad service also is available at the points mentioned by the Army witness and must be assumed to be available at most, if not all, points in the named States. This service as such is not shown to be unsatisfactory to the Army. It is not indicated how much it is used, nor is any fact established that would make it possible to evaluate the rail service or ascertain whether or how well it meets the needs of the Army. No military installations shipping or receiving explosives and ammunition are specified in Connecticut or Rhode Island, and only one installation in Delaware. The witness did not know of any

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movement of the described traffic between points in those States and Ohio points. He did not know the tonnage which would move between points covered by his testimony, the amount of equipment necessary for the transportation service desired, or the western or eastern points to or from which the traffic would move. The examiner concluded that a need for motor service could not be found on the basis of such vague and general testimony.

A number of the applicants and the Department of Defense except to this conclusion, contending that the existing rail and motor service is not adequate; and that the Army has a real need for all of the service desired by it. Riss refers particularly to the transportation performed by it under temporary authority, arguing that these operations clearly establish a need for motor service. The Army also points out that specific tonnages for the past and future were not given because of security reasons; and that shipments are shown to have moved to and from certain points and installations in the territory involved. In reply, the opposing parties ask that the examiner's conclusions be sustained. They contend that the supporting evidence does not establish a need for the desired motor service, particularly in view of the existing rail service and the lack of specificity in the Army's testimony.

We agree with the examiner that the evidence falls short of establishing that a need exists for the motor service desired by the Army. The difficulty is that such need has not been demonstrated with the simplicity and clearness through which halting impressions ripen into reasonable certitude. We believe something more definite and precise is a requisite to a proper determination of the public convenience and necessity issue. Certainly, there is no basis here for a grant of the authority sought to provide service between all points in the broad territory involved. It may be, however, that a need for service could be established between specific points and installations, but the facts made available are not sufficient to enable us to ascertain such need or needs on these records. We find therefore, that the evidence does not establish a present or future need for motor carrier service, in addition to that now available, between points in Ohio and the eight named eastern States, or between any particular points in those States.

Ballistics samples.—"Ballistics samples" are samples taken from explosives batches at the manufacturing installation for testing purposes. The Army professes a military need for the motor transportation of this commodity in less than truckloads from the Sioux Ordnance Depot, Sidney, to the Jefferson Proving Ground near Madison, serving the Cornhusker Ordnance Plant near Grand Island, Nebr., the Iowa Ordnance Plant near Burlington, Iowa, the Savanna Ordnance

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Depot, Savanna, Ill., and the Joliet Arsenal, Joliet, Ill., as intermediate points for the purpose of picking up additional less-than-truckload shipments and making delivery of consolidated loads at Jefferson Proving Ground. Multiple-line motor service has been provided since May 1, 1951, by Union, from Sioux Ordnance Depot to Cornhusker Ordnance Depot, and by Riss beyond under temporary authority.

The service so provided has been satisfactory, and has expedited the movement of the traffic. A run is made about twice a week. The time in transit ranges from 63 to 88 hours, averaging about 70 hours. The quantity of the samples picked up at the various installations vary from trip to trip, but normally constitute a full load on leaving Joliet Arsenal. Expedited service is desired, because production on items of the type to be tested is usually held in abeyance pending the results of the tests. Although there is storage space at destination, the samples are not usually stored, but are promptly tested in order that the results will be known and manufacture may continue. Rail and rail express service has been used but is not adequate.

While there is no single-line motor service available, a joint-line service could be performed under a combination of authorized carriers. For example, Union, Watson, Hayes, and C. I. M. & L. Transit Corporation are authorized to provide such service. The witness for the latter carrier, which serves the Jefferson Proving Ground and has transported substantial quantities of dangerous explosives in interline movements, testified that this carrier could make arrangements with the other named carriers to move the traffic by trailer interchange without physical transfer of lading, and expressed the opinion that the use of such a combination of carriers would not cause any delay in transit. The Army witness also admitted that there are other carriers authorized to serve the points.

The examiner found that before any additional motor carriers should be authorized to perform all or part of the service in the transportation of ballistics samples from and to the named points, there should be a convincing showing that the existing motor carriers cannot or will not provide the service necessary to meet the Army's needs; that no such showing had been made; and that the evidence did not establish a present or future need for motor-carrier service, in addition to that presently authorized.

Exceptions to these findings are taken by Riss, Union, the Department of Defense, and others, the gist of which is that authority should be granted so that the present two-line service may be continued; that such service is actual as compared to the theoretical three- or four-line service relied upon by the examiner; that there is no convincing evidence that the named authorized carriers would agree to provide the service; and that no offer has been made to the military by these

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carriers to operate the desired expedited service. In reply, the protesting railroads and others contend that the evidence does not establish a need for the proposed service, the railroads emphasizing particularly the following testimony of the supporting Army witness on cross-examination.

Q. There are sufficient carriers sufficiently authorized who could render the service, assuming they met Government regulations or standards, isn't that right?

A. There are sufficient carriers authorized to render the service.

Q. And on which the Department has made no demands?

A. That is correct.

We agree with the examiner. The burden is upon the carriers or carrier seeking the authority to establish that there is a need for the proposed service and that the existing facilities are inadequate to meet such need. In our view this has not been done. No sufficient reason is given why the existing authorized motor carriers were not given the opportunity to provide the desired service, and the evidence indicates that such carriers would be willing to do so. As presently informed, therefore, we are not persuaded that the proposed service for the transportation of ballistics samples is required by the public convenience and necessity.

The Pauline Depot.—This depot, with area of about 375 acres and located approximately 6 miles south of Topeka on U. S. Highway 75, is served by The Atchison, Topeka, and Santa Fe Railway Company. It provides concentrated storage and issue facilities for a wide variety of commodities, except dangerous explosives, and its traffic moves between the depot and numerous points in the United States. It plans to stock certain new items, and additional tonnage will move at that time. In the period from January 1 through July 31, 1951, approximately 50,000 tons of various commodities were received at the depot and about 35,000 tons were shipped, of which about 4,000 tons were received by truck, and 8,000 tons were moved out by truck. Of that received by truck, approximately 3,000 tons were interlined at Topeka, but none of the outbound traffic was so interlined. The interchange of traffic at Topeka usually results in a delay to a shipment of approximately 1 day, which delay is said to impede the defense program, as items moving in or out of this depot are usually in critically short supply.

The Air Force supports the applications of the motor carriers seeking authority to serve the depot in the transportation of general commodities, except dangerous explosives, in connection with their authorized interstate service to and from Topeka, but leaves to us the determination of how many additional carriers should be authorized. Several motor carriers now hold certificates to serve the depot directly,

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including Watson, Healzer Cartage Company, The Santa Fe Trail Transportation Company, and Motorways, Inc. They are soliciting additional traffic, and are not being used to capacity. Nevertheless, additional service is desired in order that the delay resulting from interchange at Topeka may be eliminated. No change in the proportion of rail and truck shipments is contemplated, nor is it intended to divert tonnage from any existing carrier if authority to serve the depot is granted to others. For the most part shipments will continue to be received and shipped to the same points as in the past. On outbound shipments the Air Force is interested in obtaining additional service, particularly to distant points, such as Port Chicago, San Francisco, and Stockton, Calif., and Ogden, Utah. There is no intention to supplant any of the existing carriers, but only to supplement their service and to obtain an improved service.

Capitol, Mid-States, Wheelock Bros., Inc., Union, and Pacific Intermountain Express Co., herein called P. I. E., seek authority to serve the Pauline Depot in off-route or intermediate-point service in connection with their presently authorized operations to and from Topeka. The proposed operations of P. I. E. would be restricted to service to and from points on its lines west of Topeka. Riss and Red Ball Transfer Co., originally also sought authority to serve the depot, but both state that under *Commercial Zones and Terminal Areas*, 54 M. C. C. 21, they now have such authority.

The Air Force is the only shipper presenting evidence as to the need for service at the depot, and, as indicated, it expressed no need for service for the transportation of dangerous explosives. The present operations of the above-named applicants are described in appendix A to the examiner's report. All hold authority to transport general commodities, with certain exceptions, including dangerous explosives, to and from Topeka. Generally speaking, these applicants' existing routes serve numerous points west, east, and south of Topeka, and all now transport considerable traffic for long distances over their lines which must be interchanged with other carriers at Topeka or other nearby points for the movement to and from the depot.

The examiner found that there is a need for the proposed motor service in the transportation of general commodities, except dangerous explosives, in addition to presently available service; that authorization of the proposed operations would not materially endanger or impair the operations of the existing carriers; and that all of the above-named applicants should be authorized to perform the proposed operations, provided they are qualified to do so. To these findings, exceptions are taken by the railroads, Riss, and Watson. They contend that the existing rail and motor service is adequate

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to meet all the transportation needs of the depot; and that the testimony given by the Air Force representative does not establish a need for any additional motor service. In reply, the applicants point out that they now are participating in traffic moving to and from the depot by interchange at Topeka or other nearby points; that the depot, only 6 miles from Topeka, should be considered a part of the metropolitan area of that point; and that they should not be required to divide their traffic with other carriers holding authority to operate between Topeka and the depot.

The Pauline Depot is an important base of the Air Force and receives and forwards military traffic moving to and from points throughout the United States. With their routes serving Topeka, the applicant carriers are in a position to assure to the Air Force all the benefits of single-line service between the depot and many distant points. Admittedly, motor and rail service now is available, but we are not convinced that the proposed services should not be authorized. While in some instances, the granting of similar operating authority to five carriers might be regarded as resulting in service by an excessive number, in this particular instance, all the applicants generally serve extensive areas and would be in a position to provide the Air Force with better controlled and expedited transportation in connection with traffic moving to and from remote points served by them. All circumstances considered, we affirm the examiner's findings.

Other evidence as to need for service.—As previously indicated, the applicants seek extensive authority to conduct operations to and from points or to transport commodities not covered by the evidence offered by the Department of Defense. Obviously, little consideration need be given to such requests in those instances where there is no shipper evidence of a need for service, for a mere desire on the part of a carrier to extend its operations, standing alone, is not proof of public convenience and necessity. *Sullivan Extension of Operations—Allentown*, 34 M. C. C. 157. On the other hand, Riss has performed extensive operations under temporary authority, and on exceptions it relies strongly on such operations to establish a need for its proposed operations as a whole and for a grant of its application to the exclusion of the others. For example, in addition to dangerous explosives, Riss has carried under temporary authority a large volume of other commodities from and to Government and military installations.

Section 210a (a) of the act specifically provides that a grant of temporary authority "shall create no presumption that corresponding permanent authority will be granted"; and we have repeatedly found that the mere fact that a carrier has been able to obtain traffic while

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operating under temporary authority creates no presumption that the continuance of such operations are required by the present or future public convenience and necessity. *Major Contract Carrier Application*, 43 M. C. C. 795. Evidence of such past lawful operations, though relevant, is not controlling, and must be weighed with the evidence of supporting shippers. Except to the extent previously shown, neither the Department of Defense nor any other shipper supports the Riss application. In such a situation, there is no sound basis for a finding of a need for additional motor service by Riss.

A representative of the Navajo Freight Lines appeared in support of Mid-Continent's application. It has interchanged dangerous explosives and other traffic with Mid-Continent, and expressed a desire for the service proposed by the latter. This evidence, standing alone, does not establish a need for service, and we conclude that no need has been established for any motor-carrier service other than that heretofore described.

Selection of carriers and related matters.—Having previously determined that certain motor-carrier service for the Navy should be authorized, the next question is what carrier or carriers should be selected to perform that service. The examiner selected Riss, and in this connection, some of the other applicants contend that more than one carrier should be authorized, and that a single carrier should not be given a monopoly to serve the Department of Defense.

A determination of which carrier or carriers should be picked is difficult, particularly as the Department of Defense leaves to us the matter of selecting the ones necessary to provide it with adequate service. An examination of the applications in which the applicants filed exceptions or otherwise expressed an interest discloses that Interstate Motor Freight System, Ringsby Truck Lines, Inc., Hennis Motor Freight Lines, Inc., Spector Motor Service, Inc., Red Ball Transfer Company, Hancock Trucking, Incorporated, and Eastern Motor Express, Inc., hereafter called Interstate, Ringsby, Hennis, Spector, Red Ball, Hancock, and Eastern, respectively, and Riss, Whitten, and Hughes have applications under which they could be authorized to provide the necessary operations in whole or in part. These operations forming a rough triangular area, embrace service between Chicago and Crane, on the west, and Hingham and Earle, on the east, and between Earle and Hingham. Interstate, Spector, Eastern, and Riss now conduct operations in this area. The operations of Ringsby and Red Ball are between midwestern and western points, Hughes operates primarily in the South, Hennis operates mainly in the South and Midwest, and Hancock's operations are east of Pittsburgh, Pa. Whitten operates to some extent in the area, but its exceptions merely

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request the elimination of its present circuitous gateway of Nemours, a matter mentioned in the discussion of the Army's evidence.

In the circumstances we believe only Riss, Interstate, Spector, and Eastern need be given further consideration in our selection, and we are inclined to agree that more than one carrier should be authorized. While the volume to be transported is not disclosed, it is reasonable to conclude that other carriers should be allowed to participate in the traffic. By interchange with western carriers at Chicago and Crane, authority can be granted to the four last-named carriers so that they all can participate in the traffic and provide interchange service between the western and eastern points here involved. Therefore authority will be granted as follows:

Carriers	Between
Interstate	Chicago and Hingham
Eastern	Chicago and Earle
Spector	Crane and Hingham
Riss	Crane and Earle
Riss	Earle and Hingham

Such a grant will provide the Department of Defense with a choice of carriers and should facilitate the setting up of adequate interchange arrangements for its east-west traffic. In addition, it will permit the selected carriers to coordinate their operations in the transportation of dangerous explosives with their existing operations and enable them to supervise closely the new service in the area in which they now maintain substantial operations.

Before discussing the fitness issue, certain other matters need be considered. The examiner found that a grant of irregular-route authority would enable the carrier or carriers selected to provide a more flexible operation, to avoid large communities, congested highways, and important bridges, and to interchange traffic at points outside large cities; and he recommended that such authority be issued. Some of the protestants take vigorous exceptions to this recommendation. One exceptant expresses the substance of their position, as follows:

> Apart from the fact that no authority at all is justified, it is believed that irregular route operation as recommended is not warranted. The wishfull declaration that dangers would be avoided under such broad authority does not mean that they would be. There would be nothing in the certificate to prevent numerous trucks over numerous routes between the same points, or over bridges or through heavily populated areas, including roads exposing school children and schools to the hazards of such transportation.

We agree with the examiner that irregular-route authority should be authorized, and, at this time, it appears desirable to give further consideration to the highway matter as it pertains to public convenience and necessity. It has been recognized that the existing

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highway systems are inadequate for existing traffic in some respects; and that the operations to be authorized for the transportation of dangerous explosives will be conducted in a heavily populated area of the country. On the other hand, only a limited grant is to be made, and one that should not add an appreciable amount of traffic, if any, to the highways, particularly as a substantial amount of explosives traffic already is being transported in such area. Grants of irregular-route authority to the carriers selected will enable them to conduct operations in accordance with any local restrictions imposed on trucks carrying explosives, and we are not convinced that authority to perform the service found needed by the Navy should be denied because of the highway situation brought to our attention in these proceedings, either on the basis of the public interest or the national transportation policy.

The traffic to be transported for the Navy would move on Government bills of lading or on commercial bills of lading to be converted later to Government bills of lading, and the authority sought by Riss is restricted accordingly. Since the authority to be granted herein covers transportation from and to Government military installations, and as it would be difficult to police the described limitation with respect to converted commercial bills of lading, there is no need to use any such restriction; and none will be imposed here. Some of those opposing the applications also say that as the evidence relates solely to Government explosives, the examiner should not have recommended a grant of authority to transport any and all explosives. But the Department of Defense ships many types of explosives, and it would be impracticable to attempt to specify the exact kind and types which may be transported.

One other contention merits some further comment. We have, as seen from our discussion of the various issues raised, constantly kept in mind our responsibilities under the national transportation policy. The general purposes of that policy must be considered in all proceedings of the character here presented. On exceptions the railroads and others, however, contend that the examiner did not consider *all* of the evidence in the light of that policy, the railroads stating:

> As we have shown in our brief, with a complete analysis and citation of the record, the transportation involved gives rise to special considerations under each provision of the national transportation policy. As the traffic moves in tremendously variable quantities and requires special services because of its dangerous character, the railroads have special inherent advantages, particularly compared with trucks, which under the policy must be preserved. Contrasted with truck service, the rails provide a less dangerous, more adequate, more economical, and more efficient service, and the inherent advantage of the rails in all these respects is threatened by diversion of this and other traffic by creating unsound economic conditions in transportation. Such diversion likewise threatens the maintenance of reasonable charges for transportation service.

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For all these reasons, cooperation with the several States and encouragement of fair wages and equitable working conditions require that special considerations be applied in determining issues under section 207.

The contention is without merit. A review of the examiner's report shows that he gave full consideration to that policy in making his recommendations; and, as indicated, we have considered all of the provisions of the policy in reaching our conclusions.

FITNESS

The final issue to be determined is whether each of the applicants which would provide the service found required by the public convenience and necessity is fit, willing, and able properly to perform such service and to conform to the requirements of the act and to our rules and regulations thereunder; and the burden of so establishing rests upon each such applicant. There is no inflexible rule by which an applicant's fitness can be determined. Consideration should be given to the nature and extent of past violations of our safety rules and regulations, and of State and city laws and regulations, the effect of such violations upon uniform regulation, the mitigating circumstances shown to exist or to have existed, whether the carrier's past conduct represents a flagrant and persistent disregard of the provisions of the act and our rules and regulations thereunder, and the extent to which the carrier is attempting to take corrective measures to bring its operations in compliance with the law and regulations. *Mathews Trucking Corp. Ext.—Maine and New Hampshire*, 53 M. C. C. 737; and *Hayes Frt. Lines, Inc., Ext.—Alternate Routes in Michigan*, 54 M. C. C. 643.

Fitness of the applicants seeking authority to serve Pauline Depot.—A description of the operations, financial standing, safety programs, and other data relative to these applicants is set forth in appendix A to the examiner's report. All are substantial carriers with ample finances, and they are in a position to provide the service required at the depot. The railroads presented an exhibit analyzing the hours-of-service violations reported by these applicants for the period from January 1950 to October 1951, both inclusive. The exhibit provides varying information, but since the only authority to be granted these applicants is to serve the Pauline Depot, we conclude that each is fit, willing, and able properly to provide this service.

Fitness of the applicants selected for grants of authority to transport dangerous explosives.—The financial condition, organization, facilities, and safety programs of these applicants are described in appendix A to the examiner's report. With respect to Interstate, Spector, and Eastern, the railroads presented some hours-of-service violations reported by these carriers in 1950 and 1951. Such evidence affords no

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real basis for a finding of unfitness at this time, and, on the basis of all facts of record, we conclude that all of them are fit and able to engage in the transportation of dangerous explosives.

The protesting railroads, the A. A. A., and others presented evidence of alleged violations by Riss of our safety regulations and of State and city laws and regulations, which evidence, as well as the examiner's conclusions with respect thereto, are set forth in his report. The examiner concluded that, on the record, Riss is fit and able, financially and otherwise, to conduct motor operations for the carriage of explosives, to which finding exceptions were filed by the railroads, A. A. A., and others. Pertinent to this issue is the recent action of division 5 of the Commission instituting in No. MC–C–1783, Riss & Company, Inc., Investigation of Operations, an investigation under sections 204 (c) and 212(a) of the act into the practices of Riss relative to noncompliance with our safety rules and regulations and other violations of law. In view of this development, there is good reason why a finding with respect to Riss' fitness should not be made here at this time; and therefore, there is no need to discuss the evidence submitted on this issue. In the circumstances, we believe that the best procedure to follow, and one that is reasonable and fair to the parties, is to reopen the Riss application proceeding for further hearing solely with respect to the fitness of Riss to conduct the limited operations found to be required by the public convenience and necessity and which Riss has been tentatively selected to perform. This will be done, and the Riss application in all other respects will be denied. Consideration also will be given later to terminating all of Riss' temporary authorities which do not cover the above-mentioned operations and which have been extended until such time as there has been a final determination of No. MC–200 (Sub-No. 84).

FINDINGS

We find that the present and future public convenience and necessity require operation by the applicant in No. MC–200 (Sub-No. 84) as a common carrier by motor vehicle, in interstate or foreign commerce, (1) of the commodities classified as class A, class B, and class C explosives in our Rules and Regulations Governing the Transportation of Explosives and Other Dangerous Articles, (2) of ammunition not included within the classes specified in (1) above, and (3) of component parts of ammunition and of class A, class B, and class C explosives, over irregular routes (*a*) between the site of the Naval Ammunition Depot at Crane, Ind., and points within 3 miles of such depot, and the site of the Naval Ammunition Depot at Earle, N. J., and points within 3 miles of such depot, and (*b*) between the site of the Naval Ammunition Depot at Hingham, Mass., and points within

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3 miles thereof, and the site of the Naval Ammunition Depot at Earle, N. J., and points within 3 miles thereof; that any certificate issued to applicant herein based on the foregoing finding shall be subject to the provision that it shall be limited in point of time to a period expiring 5 years from the effective date thereof; that this proceeding should be reopened for further hearing solely with respect to the fitness of the applicant to conduct such operation; and that the application should be denied in all other respects.

We further find that the present and future public convenience and necessity require operations by the designated applicants as common carriers by motor vehicle, in interstate or foreign commerce, (1) of the commodities classified as class A, class B, and class C explosives in our Rules and Regulations Covering the Transportation of Explosives and Other Dangerous Articles, (2) of ammunition not included within the classes specified in (1) above, and (3) of component parts of ammunition and of class A, class B, and class C explosives, over irregular routes:

1. By Interstate Motor Freight System in No. MC–35628 (Sub-No. 170) between Chicago, Ill., and the site of the Naval Ammunition Depot at Hingham, Mass., and points within 3 miles of such depot.

2. By Spector Motor Service, Inc., in No. MC–69116 (Sub-No. 15) between the site of the Naval Ammunition Depot at Crane, Ind., and the site of the Naval Ammunition Depot at Hingham, Mass., and points within 3 miles of each depot.

3. By Eastern Motor Express, Inc., in No. MC–106943 (Sub-No. 35) between Chicago, Ill., and the site of the Naval Ammunition Depot at Earle, N. J., and points within 3 miles of such depot.

That each of the applicants named above is fit, willing, and able properly to perform the specified operation, and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that certificates authorizing such operations should be granted, subject, however, to the provision that they shall be limited in point of time to a period expiring 5 years from the effective date thereof; and that upon compliance by these applicants with the requirements of sections 215 and 217 of the act, appropriate certificates should be issued.

We further find that the present and future public convenience and necessity require operations by the designated applicants as common carriers by motor vehicle, in interstate or foreign commerce, as follows:

1. By Capitol Truck Lines, Inc., in No. MC–966 (Sub-No. 6), Wheelock Bros., Inc., in No. MC–38183 (Sub-No. 28), and Union Transfer Company, in No. MC–58948 (Sub-No. 57), serving the site of the 832nd Air Force Specialized Depot at Pauline, Kans., as an off-

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route point in connection with their authorized regular-route operations to and from Topeka, Kans., in the transportation of the same commodities they now are authorized to transport to and from Topeka.

2. By Pacific Intermountain Express Co., in No. MC–730 (Sub-No. 25), serving the site of the 832nd Air Force Specialized Depot at Pauline, Kans., as an off-route point in connection with its presently authorized regular-route operations to and from Topeka, Kans., except on traffic moving over its routes to or from points east of Topeka, in the transportation of the same commodities it now is authorized to transport to and from Topeka.

3. By Mid-States Freight Lines, Inc., in No. MC–954 (Sub-No. 34), serving the site of the 832nd Air Force Specialized Depot at Pauline, Kans., as an intermediate point on its regular route over U. S. Highway 75 from Chicago, Ill., to Wichita, Kans., via Topeka, Kans., as set forth in certificates No. MC–954, in the transportation of the same commodities it now is authorized to transport to and from Topeka over said route.

That each of the above-named applicants is fit, willing, and able properly to perform the specified operation, and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder; that certificates authorizing such operations should be granted; and that upon compliance by these applicants with the requirements of sections 215 and 217 of the act, appropriate certificates should be issued.

We further find that the present and future public convenience and necessity do not require any of the other operations proposed in the applications considered in these proceedings; and that all of the applications, except to the extent granted herein and except to the extent that No. MC–200 (Sub-No. 84) is reopened for further hearing, should be denied.

An appropriate order will be entered.

FREAS, *Commissioner*, dissenting in part:

I disagree with the report insofar as it inaugurates a new general policy of limiting motor-carrier authority for the transportation of explosives to a period not exceeding 5 years. I am not per se against limited-term certificates or permits. Where the circumstances presented show that a proposed service will be needed only for a certain duration, the authority ought to be restricted accordingly. Here, however, I find neither factual basis nor valid reason for such limitation, or for declaring that similar action will be taken in other proceedings and, thus, implying that all such operating rights conferred in the future will be automatically restricted to the specified or to a lesser period. Neither the affected parties nor the industry generally has had any prior notice of, or opportunity to submit evidence or

arguments bearing upon, such a change in policy. In fact, while some of these proceedings were still pending, we continued to grant permanent authority for the transportation of explosives to other applicants, some of whom filed their applications subsequent to those here involved.

Aside from the grave doubts which I have concerning the legal propriety of announcing and applying here the indicated new policy, I question also its soundness from a regulatory or an administrative point of view. As I understand the report, the sole reason advanced therein for limiting explosives authority to a 5-year term is the belief that this would promote the public safety in connection with the transportation of dangerous articles by enabling the Commission to review periodically the carrier's safety record. While the purpose is quite laudable, the method chosen seems to me to be inappropriate, incongruous, and inordinate. It would require the periodic filing of new applications with the whole unavoidable administrative process repeated. If some of the cases here are any indication, carriers had better file renewal applications immediately upon the receipt of their original term certificates or permits, if they desire to avoid any break in service.

Why should public and private resources be expended to prove again and again that a present or future need exists for the very service as to which public convenience and necessity has already been established, when all we are after is a reexamination of the fitness of the carrier to continue the operation. Why should some carriers, whether or not there are any reasonable grounds for questioning their fitness, be subject to this unnecessary and cumbersome procedure, while those who were fortunate enough to have acquired authority heretofore escape it.

We should promote and encourage compliance with our safety regulations by all reasonable means, direct or indirect, which are at our command. In my opinion, however, the objectionable features of the new policy advocated herein and its apparent disadvantages to the carriers, the shippers, and the public generally outweigh any of the possible benefits which may be derived therefrom. For the present, we should inaugurate a more vigorous enforcement program, including the institution of revocation and criminal proceedings, whenever it is deemed appropriate; continue to deny extension applications to carriers who disregard or violate our safety rules; and, if necessary, promulgate more stringent safety regulations.

COMMISSIONERS ARPAIA and WINCHELL were necessarily absent and did not participate in the disposition of these proceedings.

COMMISSIONER HUTCHINSON did not participate in the disposition of these proceedings.

APPENDIX I

Tabulation of explosions involving the interstate transportation of explosives by motor carriers

Date	Place of accident	Commodity	Casualties			Brief description of accident
			Fatalities	Injuries	Property damage	
Common and contract motor carriers						
Oct. 15, 1948	Tomaqua, Pa.	Dynamite	0	0	$14,500	Fire began under hood, exploded gasoline tank and caused cargo to explode.
July 15, 1949	Spearfish, S. Dak.	Fireworks	0	0	16,000	Fire in cargo space resulted in explosion of fireworks.
Nov. 14, 1950	Dillner, Pa.	Dynamite and blasting caps	1	11	2,000,000	Truck collided with automobile, overturned, caught fire, and load exploded.
Feb. 1, 1951	Halltown, W. Va.	Dynamite	1	18	67,830	Truck in motion caught fire from unknown cause, and load exploded.
Aug. 10, 1951	Haviland, Kans.	Explosive ammunition	0	0	19,200	Tire fire ignited cargo, producing explosion.
Private carriers						
Mar. 24, 1950	Pleasant View, Tenn.	Dynamite	2	8	8,500	Tire fire ignited cargo, producing explosion.
Aug. 7, 1951	Mercersburg, Pa.	Dynamite	0	0	35,000	Brakes failed on long grade. Driver abandoned vehicle which left roadway, caught fire, and exploded.

Incidents where fires in the interstate transportation of explosives by motor carrier did not result in explosion—Common and contract motor carriers

Date	Place of accident	Commodity	Casualties			Brief description of accident
			Fatalities	Injuries	Property damage	
June 28, 1948	Poplar Bluff, Mo.	Explosives	0	0	$8,500	Front tire blew out, vehicle overturned and caught fire.
Apr. 4, 1949	Decatur, Ala.	Dynamite	0	0	2,472	Fire began under truck from unknown cause.
Aug. 27, 1950	Butlstown, Pa.	Explosives	0	1	14,120	Collision with another vehicle resulted in fire.
Oct. 26, 1950	Bellwood, Wis.	Explosives	0	0	12,500	Tire fire caused trailer to burn.
Aug. 15, 1950	Dallas, Tex.	Mixed merchandise including "jet charges".	0	0	3,025	Fire started from unknown source while en route.

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APPENDIX II

Examiner's analysis of authorized motor services

1. Between Earle and Yorktown: Savage Truck Line, Inc., holds a certificate issued prior to the close of the hearings, and can provide the desired motor service. Although this carrier was mentioned by the Navy, there was no indication that it or its proposed service would be unsatisfactory. It must be assumed, therefore, that service provided by this carrier is adequate for Navy needs.

2. Between Earle and Hingham: No available motor-carrier service is shown of record.

3. Between Earle and Portsmouth (St. Julien's Creek): Baggett holds a permit to operate as a contract carrier between these points, and is in a position to provide service, and there is no showing that its service would not satisfy the transportation needs of the Navy.

4. Between Hastings and Crane: Watson holds authority to serve Hastings, and Chicago, St. Louis, and, on eastbound traffic only, Terre Haute, Ind. Union holds authority to operate between Hastings, Omaha, and Chicago. Tri-State holds authority to operate between points in Nebraska, Missouri, and specified points in Illinois near St. Louis. Hayes holds authority to operate between Chicago and Crane, and St. Louis and Crane. Service is thus available between Hastings and Crane by authorized carriers who have participated in or are willing to participate in multiple-line movements of explosives, and there appears to be no reason to authorize additional service between these points.

5. (*a*) Between Crane and Hingham: No available motor-carrier service is shown between these points. (*b*) Between Crane and Earle: No motor-carrier service appears to be available between these points. (*c*) Between Crane and Indian Head: Hughes holds authority to operate between the Ordnance Depot at Richmond, Ky., on the one hand, and, on the other, points in Maryland and Virginia. B. B. & L., holds authority to operate between Crane and Louisville, Ky., and Hayes holds authority to operate between Crane and various points in Kentucky, including the Ordnance Depot at Richmond; and together they are in a position to provide a joint-line service between these points. Baggett also can provide single-line contract-carrier service between these points, and there is nothing to indicate that this service is unsatisfactory or would not fully meet the needs of the Navy. (*d*) Between Crane and Yorktown: Hayes and Whitten are in a position to provide a joint-line service between these points. Hughes and B. B. & L., hold authority as above described, and these carriers in connection with Hayes and Whitten also could provide joint-line service. There is no showing that these carriers could not satisfy the needs of the Navy for service between these points. (*e*) Between Crane and Portsmouth (St. Julien's Creek): Hayes and Whitten, B. B. & L., and Whitten, and Baggett hold authority to provide service between these points. The contract-carrier single-line service of Baggett was said to be unsatisfactory, since there could be no interchange of shipments with other carriers at Crane. Considering that multiple-line common-carrier service is available between these points, there appears to be no need for any additional service.

6. (*a*) Between Hastings and Hingham: Watson, Union, and Tri-State hold authority to operate to and from Hastings as described in 4 above. No common carrier appears to hold authority to serve Hingham on traffic to or from the west. (*b*) Between Hastings and Earle: Watson, Union, and Tri-State hold authority to operate to and from Hastings as described in 4 above. No common carrier appears to hold authority to serve Earle on traffic to or from the west.

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(c) Between Hastings and Indian Head: Watson, Union, and Tri-State hold authority to operate to and from Hastings as described in 4 above. Hughes holds authority to operate to and from Indian Head as described in 5 (c) above. Hayes holds authority to operate between Chicago and the Ordnance Depot at Richmond, Ky., and other Kentucky points. (d) Between Hastings and Yorktown: Watson, Union, and Tri-State hold authority to operate to and from Hastings as described in 4 above. Hughes holds authority to operate to and from Yorktown as described in 5 (c) above. Whitten holds authority to operate (1) between Seneca, Ill., and points within 5 miles of Seneca, on the one hand, and, on the other, points in * * * Virginia, and (2) between points in * * * Kentucky, Ohio, and Virginia. Hayes has authority as described in 6 (c) above. (e) Between Hastings and Portsmouth (St. Julien's Creek): Watson, Union, and Tri-State hold authority to operate to and from Hastings as described in 4 above. Hayes holds authority as described in 6 (c) above. Hughes and Whitten hold authority to operate to and from Portsmouth as described in 6 (d) above.

The carriers named in 6 (c), (d), and (e) are in a position to provide multiple-line service between the specified points. They have participated in joint-line movements, and no reason appears why they cannot provide the motor-carrier service desired by the Navy.

7. (a) Between McAlester and Hingham: Mid-Continent holds authority to operate between points in Oklahoma on and east of U. S. Highway 81 (which includes McAlester), on the one hand, and, on the other, points in Illinois on the south of U. S. Highway 40, and those on and north of U. S. Highway 6, and those in Indiana on and south of U. S. Highway 40. Tri-State holds authority to operate between points in Oklahoma, Missouri, and specified points in Illinois near St. Louis. Riss holds authority between McAlester and St. Louis. No motor carrier of record holds authority to operate to the west out of Hingham. (b) Between McAlester and Earle: Mid-Continent, Tri-State, Riss, and Yellow Transit hold the authority described in 7 (a) above. No motor carrier appears to hold authority to operate to the west out of Earle. (c) Between McAlester and Indian Head: Mid-Continent, Tri-State, Riss, and Yellow Transit hold authority to operate to and from McAlester as described in 7 (a) above. Hughes holds authority to operate to and from Indian Head as described in 5 (c) above. Hayes holds authority between Chicago, St. Louis, and various points in Indiana, on the one hand, and various points in Kentucky including the Ordnance Depot at Richmond, Ky., on the other. (d) Between McAlester and Yorktown: Mid-Continent, Tri-State, Riss, and Yellow Transit hold the authority described in 7 (a) above. Hughes holds authority to operate to and from Yorktown as described in 5 (c) above. Whitten holds authority to operate to and from Yorktown as described in 6 (d) above. Hayes has authority as described in 7 (c) above. (e) Between McAlester and Portsmouth (St. Julien's Creek): The multiple-line service of Mid-Continent, Hayes, and Whitten is available. The services of Tri-State, Riss, and Yellow Transit are also available to and from McAlester as described in 7 (a) above. Hayes holds authority as described in 7 (c) above. The service of Hughes is also available to and from Portsmouth as described in 5 (c) above.

The carriers named in 7 (c), (d), and (e) are in a position to provide multiple-line service between the points specified therein. All have carried dangerous explosives, and the examiner is not convinced that they could not provide a service satisfactory to the Navy.

64 M. C. C.

U. S. GOVERNMENT PRINTING OFFICE: 1953

However, the evidence in Riss & Co., Inc., Extension -- Explosives, supra, and certain of the evidence herein, other than that relating to unfair competitive practices, fairly supports the conclusion that Riss' entire pattern of operations and its attitude has been one of adamant refusal to abide by our safety regulations in many material respects. That such refusal is willful can hardly be disputed. See Chicago, B. & Q. R. Co. v. United States, 194 Fed. 342, 346.

Interveners contend that the examiner erred in observing that "It is impossible for management to have complete control of its drivers at all times because of the nature of the operation." This statement was the premise for the examiner's conclusion that "It therefore is impossible for any motor carrier to achieve a perfect record with respect to safety regulations and violations of the various governing laws and regulations." This, of course, does not mean that the carrier is not fully responsible, as is the driver, for compliance with our safety regulations. The question here is one of overall fitness, and with such a question in issue a carrier's entire safety record and the trend thereof, either up or down, must be weighed in the light of other concurrent factors such as its policies and actual practices in the hiring, training, and supervision of its drivers.

In view of our discussion of the evidence following, we do not deem it necessary to rule upon interveners' contentions that the examiner erred in evaluating specified portions of the evidence. To the extent our evaluation may differ from that of the examiner, the exceptions may be considered sustained. In our considered opinion, the evidence shows that Riss' compliance with our safety regulations, including section 192. 3 thereof, has been extremely poor in the past, and while it also reveals the beginning of an attempt, following the institution of these proceedings, to improve compliance, compliahce has not, in our opinion, been achieved in any satisfactory degree.

In the matter of log keeping and hours of service violations, Riss' evidence purports to show a system of accounting for and checking all logs

which reduces the possibility of error. Yet, evidence introduced by the Bureau clearly reveals that Riss' hours-of-service violations have not abated but have instead increased since use of the new system began. It is therefore clear that Riss' purported compliance with this phase of the safety regulations is, in large part, mere paper compliance. If, as Riss contends, many of the hours-of-service violations are attributable either to errors on the part of drivers or to their disobedience, it would appear that Riss' training and instruction program has failed to make any impression on these employees. The number of log violations shown by the Bureau is not entitled to much weight, however, because of its remoteness in time. We consider it reasonable to expect that as a carrier grows and its operations become more widespread, it should expand and intensify its safety program in a manner which will insure continued effective compliance with the requirements of the Interstate Commerce Act and the rules and regulations promulgated thereunder. In our opinion, it also is reasonable to expect as a matter of course that when a carrier has grown to the point where it can maintain a separate department concerned with every aspect of safety, its equipment maintenance, accident record, and other safety features will improve, not only percentagewise but in absolute terms. Riss clearly was long unwilling to assume the burden of establishing a comprehensive safety program or safety department. It is noteworthy that no integrated and comprehensive program was established by it until sometime in 1954, and although that program had been in operation almost 2 years at the time the hearing in the instant proceedings was held in 1956, no results which would support a reasonable expectation of effective and continually improving future compliance, have been forthcoming. We have carefully considered the lengthy and detailed evidence concerning the program instituted by Riss, and on this record we must conclude that it has not achieved its goal.

With regard to the overweight violations which we have found to be violative of section 192.3 of the safety regulations, we consider Riss' management to have been particularly delinquent because overweight violations are

entirely within the control of its supervisory personnel. The failure to eliminate violations of this nature is, in our opinion, the direct responsibility of its management. Moreover, it is apparent, since a number of violations of the 10-hour rule were not reported, that Riss' recordkeeping with respect to safety matters leaves much to be desired. Since the Bureau's evidence is representative only, it may be reasonably inferred that there are considerably more violations of this general nature which have not been reported, and we cannot condone such inefficiency on the part of a carrier of Riss' size, experience, and resources.

The evidence concerning accidents compels the conclusion that in this area also Riss' safety program has failed to accomplish any significant improvement. During the years 1951 through 1953, Riss' vehicles were involved in nearly 1,200 accidents resulting in a shocking total of 51 deaths and 501 injuries. The total property damage resulting from these accidents was in excess of $1,800,000. During 1954, its 275 accidents resulted in 4 deaths, 97 injuries, and property damage of $273,000, which, in our opinion, reflect a situation far from satisfactory and below what we deem it reasonable to expect of a motor carrier whose operations so vitally affect the public interest, especially when consideration is given to the high percentage of single vehicle accidents and accidents involving mechanical defects. These matters, in particular, and its compliance record generally, reflect to us management and operational deficiencies which in the interest of the Nation's highway safety must be corrected.

Having considered all of the evidence of record, we conclude that an order should be entered requiring Riss to cease and desist from its violations of this Commission's safety regulations and thereafter to refrain from committing such violations. The proceeding will be held open, and the Bureau or complainant may petition for the immediate suspension or for revocation of respondent's certificates if the compliance required by our order is not forthcoming or is not sustained. Riss may, at any time on and after 1 year from

the effective date of the order, petition for vacation thereof provided the petition is accompanied by an offer to prove that such compliance as we shall require has been achieved and sustained.

FINDINGS

In both proceedings we find that defendant-respondent is not presently in compliance with the Interstate Commerce Act or with the rules and regulations prescribed by this Commission relative to the qualifications and maximum hours of service of employees and safety of operation and equipment; that an order should be entered requiring the defendant-respondent to cease and desist from all violations, of the type above described, of the Interstate Commerce Act and the described rules and regulations of the Commission and to bring its operations into compliance with the act and with such rules and regulations, and thereafter to stay in compliance, and that the proceedings should be held open for such further proceedings as may be warranted.

An appropriate order will be entered.

BEST COPY AVAILABLE
from the original bound volume

1	2	3	4	5	6	7	8	9	10
HUNAKER ANX NAD									
	103	PORT CGO NAV MAG	ADN	31063028	043902	41430	445	42404	1040
						41430		42404	
				196		41430		42404	
	143	PORT CGO NAV MAG	ADN	0223303	002808	10774	515	26780	340
						10774		26780	
	102	PORT CGO NAV MAG	ADN	0223354	002013	33052	445	85004	21
	103	PORT CGO NAV MAG	ADN	0223355	002014	59960	445	61300	613
	103	PORT CGO NAV MAG	ADN	0223356	002015	30900	445	31300	413
						173932		178000	
	129	PORT CGO NAV MAG	ADN	0223500	002045	19425	546	25116	516
						19425		25116	
	123	PORT CGO NAV MAG	ADN	0223659	002050	56415	472	63000	714
	123	PORT CGO NAV MAG	ADN	0223660	002051	56040	472	62600	714
	123	PORT CGO NAV MAG	ADN	0223661	002053	55135	472	67800	1300
						165190		206600	
	109	PORT CGO NAV MAG	ADN	0223799	002698	57420	472	63013	714
	109	PORT CGO NAV MAG	ADN	0223793	002703	56640	472	61900	714
	109	PORT CGO NAV MAG	ADN	0223801	002704	54720	472	59800	714
	109	PORT CGO NAV MAG	ADN	0223800	002705	56340	472	61600	714
	113	PORT CGO NAV MAG	ADN	0223799	002706	57420	472	63013	714
	109	PORT CGO NAV MAG	ADN	0223802	002702	56340	472	61600	714
						339020		370700	
	109	PORT CGO NAV MAG	ADN	0223930	002113	31300	472	33900	390
	109	PORT CGO NAV MAG	ADN	0223931	002113	31300	472	33900	390
	109	PORT CGO NAV MAG	ADN	0223933	002114	30600	472	33000	390
	109	PORT CGO NAV MAG	ADN	0223932	002115	30375	472	32700	390
	109	PORT CGO NAV MAG	ADN	0223934	002116	30680	472	33000	390
						154335		167400	
				130		173076		187411	
						915106		1017110	
	159	SEAL BEACH N A B	ADN	0203173	043968	10162	557	21066	1300
						10162		21066	
				133		10162		21066	
						10162		21066	
	126	HARE ISLAND N A D	ADN	31062030	042222	43700	483	54170	817
						43700		54170	
				134		43700		54170	
						43700		54170	
	177	N A D FALLBROOK CAL	ADN	0203164	043643	20500	483	36023	115
						20500		36023	

Plaintiff's Exhibit 37A

Revised Schedule "B"

This Revised Schedule "B" replaces and supersedes Schedule B attached to answers of Riss filed July 15, 1958 and all prior answers to interrogatories relating to amount of and revenues from transportation by Riss of explosives for the United States.

This Revised Schedule "B" contains information relating to shipments of Class A and B explosives by or in behalf of the United States, transported by Riss & Company, Inc., in direct or interline service, during the nine year period January 1, 1949 through December 31, 1957. It includes shipments of Class A and/or B explosives mixed with small arms ammunition, and with inert freight. It includes shipments made by or in behalf of the United States under Government and commercial bills of lading. The Schedule does not include shipments of small arms ammunition, of other Class C explosives, or other articles when not transported with Class A and B explosives.

Revised Schedule "B" shows a total weight of 1,653,330,330 pounds and total revenues to Riss of $30,990,563.62 for the nine year period 1949-1957. The total weight and revenue, for each of these years, is as follows:

		WEIGHT (Pounds)	Revenue	
1949		21,790,337	395,079.96	
1950		50,772,011	711,278.73	
1951	118,306,379	118,335,200	2,014,688.53	2,013,923 ✓
1952		394,084,134	7,374,734.44	
1953	606,117,945	606,235,533 ✓	11,460,202.61	11,455,680 ✓
1954		194,314,443	3,611,938.41	
1955	166,112,560	166,142,321	3,603,581.02	3,601,427 ✓
1956		71,827,386	1,493,269.50	
1957	12,346,073	12,328,965 ✓	325,790.12	326,114 ✓

The Revised Schedule shows points of origin, points of destination, bill of lading number, Riss freight bill number, date of shipment, weight of shipment, the rate charged, indicates whether the shipment was interlined with other carriers or transported entirely by Riss from origin to destination, and shows the revenue received by Riss for the transportation performed by Riss.

This Revised Schedule, for convenience, has been divided into four parts. Part I, pages 1 through 216, shows all shipments made from origin points in the states of Arkansas through Indiana (Crane NAD). Part II, pages 217 through 481, shows all shipments from origin points in the states of Indiana (Indiana Arsenal) through Kansas (Kansas Ordnance Depot). Note that through a clerical error there are no pages 378 through 387. Part III, pages 482 through 814, shows shipments from origin points in the states of Kansas (Sunflower Ordnance) through New Jersey (Ft. Hancock), and Part IV, shows all shipments from origin points in the states of New Mexico through Wisconsin (through page 1103). Pages 1103 through 1132 (end) show shipments from additional, miscellaneous, origin points in various states.

This Revised Schedule "B" has been extensively tested and checked for accuracy and completeness, and corrections and additions have been made to the Schedule. The Revised Schedule may still contain clerical errors and omissions not disclosed by the extensive checking and revising to which the Schedule has been subjected. Riss will inform the defendants of any errors or omissions which come to the attention of Riss in the future. Clerical errors and omissions which may be found in the future would not significantly affect the data.

Plaintiffs' Exhibit 40
Page 1

SOUTHERN FREIGHT ASSOCIATION
101 Marietta Street
Atlanta 3, Georgia

March 13, 1950, lhh
File 1

[ACL]

[TEA]

Mr. J. J. Fitzpatrick [CONFIDENTIAL]

Mr. J. H. Dana

Mr. W. J. Kelly

Gentlemen:

As information, I enclose copy of my confidential letter of this date addressed to members of our Executive Committee attached to which is copy of the memorandum I made covering conference with Government traffic representatives in Washington, March 10, 1950. For obvious reasons I had considerable hesitancy putting down in writing what transpired at the conference, but I finally came to the conclusion that the situation is becoming so serious it should be immediately brought to the attention of my principals and this was the only convenient way of doing so.

You will note that I have suggested for their consideration that the time may have come for discussion at "top levels" with a view of obtaining for the railroads a proper share of the available traffic of the defense establishment.

Yours very truly,

/s/ J. G. Kerr

Chairman

Plaintiffs' Exhibit 40 A
Page One

March 11, 1950

CONFIDENTIAL

MEMORANDUM OF CONFERENCE IN WASHINGTON, D. C. MARCH 10, 1950 CONCERNING RELATIONS BETWEEN RAIL CARRIERS AND GOVERNMENT AGENCIES AS TO TRAFFIC MATTERS

Present:	Captain Johnson Mr. Cowling	)	For Navy;
	Major Isen Mr. Paul	)	For Army;
	Mr. Hayghe Mr. Calloway	)	For General Services;
	Mr. Fitzpatrick	-	TEA-E R.R.;
	Mr. Dana	-	Exec. Com. WTA;
	Mr. Kelly	-	A.A.R.; and
	Mr. Kerr	-	S.F.A.

This meeting was held on request of Mr. Hayghe and he arranged for attendance of the Government representatives. Colonel Gray has expected to attend but failed to make it. Captain Johnson is the new officer in charge of traffic affairs for the Navy.

Mr. Hayghe proposed that the rail carriers when issuing Section 22 quotations same be made applicable on "Property of the United States Government" even though issued on request of and addressed to a particular agency. There was some discussion of whether or not the General Accounting Office had issued a decision to the effect that the law is that a quotation issued to any department is applicable to the traffic of another. Mr. Hayghe knew of no such decision although it is probable that General Accounting Office has arbitrarily so stated in correspondence.

He pointed out that no hard and fast rule could be observed; that quotations were often made on particularly described traffic of a given agency to meet peculiar circumstances and conditions of a competitive character or otherwise and it could not be said that the same circumstances and conditions were or are present as to the traffic of another agency or that there was any prospect of a movement of the other agency. It was

evident that the Army and Navy people had not been consulted and were not much impressed with the Hayghe suggestion. Mr. Hayghe did not care to explain in detail all the reasons for his request but did state it would result in relieving some pressure upon him. I gathered that his request might be the result of statements made at Congressional hearings to the effect that perhaps the old Procurement Division had not been as diligent in getting rate concessions as other agencies.

In the end, Mr. Hayghe asked that the carriers go as far as possible in meeting his request where the particular traffic of all Government agencies would move under substantially similar circumstances and conditions.

We brought up and discussed at length the present competitive situation as between trucks and rails in the handling of Government traffic and I briefly record herein the high points.

We inquired why it was, apparently, that the Army and Navy thought they had to divide many movements equally between rails and trucks even where the rates are equal, and if they thought a rail transportation system necessary to the nation in peace and war could be maintained under such a plan or if they regarded same as consistent with the National Transportation Policy as set forth in the Transportation Act. Our purpose was, of course, to provoke full discussion and development of facts.

For the country as a whole, at least 30% of the Navy's traffic is now moving by motor truck and this percentage is increasing rapidly. At the time of our last conference it was about 20% or 21%. The Army situation is probably much worse from our standpoint. Both as to the Army and Navy a greater percentage of traffic within the Southeast now moves by truck than elsewhere. The Navy men denied that it was as

much as 50% but no such denial was made by the Army spokesmen. In both cases, coal traffic is omitted from the calculations.

While it was denied that save in particular instances there was or is any general fixed division of 50% as between trucks and rails, there seems to be but little question, according to the statements made, that the division is roughly according to the number of carriers of both types serving the origin and in position to transport. Where only one truck and one rail route is involved, this often results in a division of 50%. There are other cases where there are, say, 6 motor carriers and 2 rail carriers where 50% of the traffic is split between the two groups. The foregoing assumes equality of rates and no necessity of quick truck service.

I repeatedly pointed out that if the Nation's need of efficient transportation at all times and the relative importance of each type is measured by the transportation of each group ordinarily performed, say 90% rail and 10% truck, certainly the rail carriers are entitled to 90% or more of the Government traffic instead of less than 70%.

The Government man pointed out that generally the truck rates are lower to the extent of the Ex Part 168 increase - or greater- than the rail rates; that the Government had many hundreds of unsolicited Section 22 quotations from the trucks; and they had no option but to ship by the type giving the lowest rate, other things being equal. It was stated, however, by the Navy spokesman that with few exceptions the trucks would not take anything paying less than 40% of 1st class. We pointed out that it was no consolation to us to get as included in our share that which trucks do not want, and that while the agencies might deem it their duty to ship by motor where the rates are less, the trucks are being given a tremendous amount of freight when the rail and truck rates are equal, and overall the rail carriers should receive at least 90% of the available traffic. In other words, the trucks should have

included within their share of 10%, all traffic handled regardless of their rate levels. It should be understood that the proportions of 90% rail and 10% truck were used as rough figures as to proper shares.

It was then frankly stated to us that the traffic men of the war agencies could not control this situation and that to accomplish the objective stated, the matter would have to be pursued and decided at top levels.

It also developed that the traffic departments are being deluged with communications from Congressmen and Senators and much time is spent explaining why particular truckers have not been given any or more traffic. This procedure is undoubtedly one of the major causes of the truckers receiving such a large share of the available traffic, entirely aside from any difference in rates as between trucks and rails.

The tactics of many truckers in cutting each others throats is causing the agencies much concern. The practice is not peculiar, we learn, to any section of the country. I heard of a situation in California where some 38 of 40 petroleum carriers competed for the Navy's traffic. After cut-throating all around, two of them had quoted rates which the Navy knew represented less than cost and if continued would have soon bankrupted all of them. A recent conference resulted in restoring the rates to more remunerative levels.

At a prior conference, Mr. Hayghe had suggested that establishment of transit privileges at all Government Storage points applicable to domestic traffic on basis of through rates would result in tying that traffic to the rails. The matter was again brought up at the present meeting. I stated that we now had such a request from the Department of Agriculture and I was informed that the Army contemplated making a similar one.

I asked them to state if such an arrangement would (1) actually control for the rails the entire movement in and out of storage points, (2) if the result would be that the rails would have more net revenue from such an arrangement than if they continued to handle a much lesser amount of traffic on basis of locals in and out (if the trucks generally want only the better paying traffic obviously such a transit arrangement would go beyond actual necessities), and (3) in the event the rails put in such a transit arrangement on domestic traffic, if the Government agencies would feel obliged to make up the traffic thus lost to the trucks by giving them equivalent amounts of other "free" traffic. We could get no real answers to these questions except as indicated below.

It was stated that the eastern railroads freely granted transit at Mechanicsburg, Pa., and other interior depots by tariffs on Section 22 quotations applicable on domestic as well as on export business. This is true. The result is, so it was said, the eastern roads pretty well control the movement in and out. At Mechanicsburg, Pa. (Navy) the trucks get about 13% of the total, presumably due to a substantial movement outbound of mixed freight where quick truck service is needed.

The Clearfield, Utah depot is one of the largest storage depots in the West. The trucks have just established by Section 22 quotation a transit arrangement at that depot unlimited as to kinds of traffic (I am not sure the latter can be true) on a basis of through rates applicable on "all-freight" and under which, say, mattresses can be shipped in and auto parts out. The Navy spokesman said, in referring to this new arrangement, that the rail carriers by doing nothing were very rapidly letting the matter get out of hand. This may or not mean that motor carriers elsewhere are contemplating establishment of similar arrangements.

Mr. Cowling referred to the recent action of eastern carriers in refusing to restore the transit arrangement on ammunition and explosives at Crane, Ind. (Southern lines have also declined the proposal). He said the result would be that practically all of the tonnage in and out of Crane would now move by truck although for safety reasons the Navy would greatly prefer movement by rail.

Reference was also made to refusal of southern carriers to reduce the rate on coal to Chamblee, Ga., for account of the Navy Air Station located nearby. It was stated that the Navy would now investigate possible conversion to oil.

Satisfaction was expressed with the recently established practices of rail carriers in expediting changes in rates to meet quoted rates of trucks, but it developed that it is still the practice of the agencies to solicit no change by either trucks or rails where it is determined that although different the respective tariff rates are regarded as reasonable. The result is that there is still a tremendous amount of Government traffic which is moved by truck because of their lower tariff rates and about which traffic the rail carriers are not always or seldom informed.

It was frankly admitted that the new policy of permitting transportation officers in the field to route 9 cars or less (instead of the former practice of less than 5 cars) without reference to Washington, probably results in greatly increasing trucks' proportions of the total tonnage. It was also admitted that it is not always difficult to break up particular movements into lots of 9 cars or less. It was again emphasized that the truck drivers are in constant touch with the shipping clerks and others at the depots and that this unquestionably increases movement by truck, whereas generally the railroad people do not have such intimate contacts.

In connection with the foregoing, Mr. Hayghe cited as illustration his own recent observations at the Washington, D. C. warehouse in which he has an office. On one side of the building freight cars are placed and loaded or unloaded. On the opposite side is the truck platform with trucks constantly being loaded or unloaded. A railroad clerk checks the cars each morning and this is the beginning and end of his contacts, if any at all, with shipping clerks. On the other side the truck drivers are in contact all the time with the clerks who have to do with shipping. The result is obvious.

The statement was made by the Navy spokesman (Cowling) and Mr. Hayghe that motor carrier Section 22 quotations had become so numerous (and burdensome) that it was hard to keep track of them. They had induced the principal motor carrier bureaus to carry them in single publications to which supplements are to be issued from time to time and with frequent consolidation of supplements. They asked that the rail carriers adopt the same practice except as to the outstanding quotations bearing A.A.R. numbers.

Mr. Hayghe stated that not more than 10% of the traffic being "stockpiled" is moving by truck.

Incidentally, we had developed (outside this conference) that the motor carriers had recently increased their rates on synthetic rubber from southwestern producing points to principal northern consuming points by adding on the X-168 increase, thus generally putting them on the rail basis. It is understood that it is now the policy of R.F. C. to let the buyer name routing via either truck or rail. The buyer takes ownership at point of origin with R.F.C. absorbing the freight to destination. I am investigation to determine what has been done from Baton Rouge. Presumably, the truck lines found out that it was the purpose of the rails to meet their rates and determined that it would

be better to have a higher rate level on which to compete. As it is, the trucks usually make deliveries in about half the time as the railroads do.

J.G. Kerr

Plaintiff's Exhibit 41

SOUTHEASTERN PRESIDENTS' CONFERENCE
Southern Railway Office Building
Washington 13, D. C.

August 30, 1951

Dear Mr. Loomis:

Responding to your letter of August 9, I agree that it is highly desirable that everything possible be done to defend the railroads' interest with respect to the motor carrier applications for greatly increased authority to transport explosives.

The Southern Railway will be represented at the meeting of the Defense Committee in Chicago at 2:00 p. m., September 6, in Room 474, Union Station Building, and the matter is being brought to the attention of our Member Roads for whatever individual action they wish to take.

Sincerely,

(Signed) Ernest E. Norris

Mr. D. P. Loomis, Chairman,
The Association of Western Railways,
Room 474 Union Station
517 West Adams Street,
Chicago 6, Illinois

Copy to -

Member Roads of the
Southeastern Presidents' Conference;

With copy of Mr. Loomis' letter with attachments.

Ernest E. Norris

Plaintiff's Exhibit 41A

THE ASSOCIATION OF WESTERN RAILWAYS
517 West Adams Street
Chicago 6, Ill.

Mr. G. Metzman
Chairman
Eastern Railroad Presidents Conference
230 Park Avenue
New York 17, New York

Mr. Ernest E. Norris
Chairman
Southeastern Presidents' Conference
Southern Railway Building
Washington 13, D. C.

Gentlemen:

I am enclosing to each of you copy of a circular which we sent to the Chief Executives of Western Lines, together with memorandum from Mr. Joseph H. Hays, with respect to the applications of certain motor carriers for additional authority to transport explosives.

You will note that a meeting of the Defense Committee has been called for Thursday, September 6, in Room 474 Union Station Building, Chicago, at 2:00 P. M., and we would be very pleased to have interested Eastern and Southern lines attend the meeting and participate in plans for the defense of these cases.

Sincerely yours,

(Signed) D. P. Loomis

Plaintiff's Exhibit 41B

THE ASSOCIATION OF WESTERN RAILWAYS
517 West Adams Street
Chicago 6, Ill.

August 24, 1951

TO CHIEF EXECUTIVES OF MEMBER ROADS: :

I enclose to each of you a copy of a memorandum prepared by Mr. Hays with respect to the applications of certain motor carriers for greatly increased authority to transport explosives.

These are most important cases. Each western road is made a member of a joint defense committee regarding these cases and it would be appreciated if each of you would designate at least one representative to attend a meeting of such defense committee in Room 474, Union Station Building, Chicago, at 2:00 P. M. on Thursday, September 6. I am also extending an invitation to interested Eastern and Southern lines.

Very truly yours,

(Signed) D. P. Loomis
CHAIRMAN

Enc.

Plaintiffs' Exhibit 41C
Page One

To Mr. D. P. Loomis: August 24, 1951

Re: Applications of Certain Motor Carriers for Additional Operating Authority to Transport Explosives.

For some time the Department of Defense has been pressing a request that the railroads reinstate a transit arrangement which was applicable to the movementsof explosives for export during World War II and that the railroads now broaden that arrangement as to apply to all such movement regardless of destination. In view of the policy questions arising out of the reparations cases and for other reasons that request has not, so far, been granted. It is thought in certain quarters that the possibility of the truck movement of explosives may be used as a means of inducing the carriers to accede to the government requests. The volume of explosives actually moving by truck has grown very substantially during the past year.

For several months various established trucking companies have been filing with the Interstate Commerce Commission applications for extension of their authorities to permit service to various government installations and to broaden commodity authorities to authorize the movement of dangerous explosives. The Commission called a conference on those cases earlier this month and at that time it developed that a representative of the Department of Defense would appear in support of the general idea of extending motor carrier service to most, if not all, of the important government installations although it would indicate no preferences as to the specific lines to be authorized.

The Commission indicated its intention of consolidating all such proceedings and it has set three of such cases for hearing in Chicago on September 17. There is annexed hereto a list showing the names of the applicant companies together with the docket numbers of the proceedings involved. It is expected that this list will be substantially augmented when the Commission hearing notice is released. It is understood that supporting testimony by a representative of the Department of Defense to be offered in these cases will be incorporated into the record on all of the pending applications. The net result

may involve a very important volume of traffic and a very substantial amount of revenue.

Following usual procedure, defense committees have been appointed in all of the pending applications, but when all those cases are considered collectively, the scope of the proposed operations is such as to involve virtually all railroads in practically all parts of the country.

It is the opinion of some of those who have given this matter some attention that it would constitute an improper application of the law to consider all those cases collectively without regard to the adequacy of rail and other service at specific individual points, and without considering the economic effect of diverting from the railroads such a substantial volume of traffic.. The opinion is also held by some that the movement of the tremendous volume of explosives which might ensue from a granting of those applications would expose the public to an improper and unnecessary hazard. We have been asked to handle the defense in some of those cases. Because of the great importance of the entire problem, it is my recommendation that all western lines be formed into a single defense committee to handle all of such applications and that a meeting of such defense committee be held in Room 474, Union Station Building on Thursday, September 6, at 2. P.M. in order to determine important questions of policy and to make necessary arrangements for the defense of the rail carriers' interest in these important cases.

I am sending a copy of this memorandum to the individuals in charge of motor carrier matters for their respective railroads. However, I would greatly appreciate it if you would forward a copy of the enclosed memorandum to the Chief Executives of member roads with the request that each road designate at least one representative to sit in this meeting with full power to act. Although the protesting rail carriers may not be called upon to move immediately on September 17, the time to prepare an adequate defense is short.

/s/ Joseph H. Hays
Counsel

att

Plaintiff's Exhibit 41C
Page three

APPLICATIONS ON AGENDA OF PRE-HEARING CONFERENCE*

MC-200 (Sub No. 84)	Riss & Company, Inc.
MC-730 (Sub No. 25)	Pacific Intermountain Express Co.
MC-35628 (Sub No. 170)	Interstate Motor Freight System
MC-52709 (Sub No. 41)	Ringsby Truck Lines, Inc.
MC-52709 (Sub No. 42)	Ringsby Truck Lines, Inc.
MC-58948 (Sub No. 53)	Union Transfer Company dba Union Freightways
MC-58948 (Sub No. 54)	Union Transfer Company dba Union Freightways
MC-68909 (Sub No. 35)	Decatur Cartage Co.
MC-102682 (Sub No. 224	Hughes Transportation, Inc.
MC-105807 (Sub No. 11)	Matthew Leo McKeone, Sr., Matthew Leo McKeone, Jr., Joseph James McKeone, and Albert Joseph McKeone, dba Red Ball Transfer Company

* We are informed additional cases will probably be included in the consolidated hearing.

Plaintiffs' Exhibit 41D

THE ASSOCIATION OF WESTERN RAILWAYS

September 17, 1951

Dear Bill:

Referring to our previous correspondence with respect to the trucking of explosives:

In order that you may be kept fully advised in this matter, I am enclosing the following:

1. Proceedings of meeting held September 6, 1951.
2. Office memorandum dealing with the cases.
3. Mr. Hays' letter of September 7, 1951, to Director Blanning requesting opportunity for further hearing.
4. Mr. Hays' telegram of September 12, 1951, to Director Blanning renewing such request.
5. Mr. Hays' letter of September 13, 1951, setting forth Director Blanning's reply.
6. List of cases included in the three hearing orders.
7. Brief summary showing commodities and territorial descriptions involved.

I am advised that satisfactory arrangements have not been made for a further hearing after the completion of applicants' cases to give the defense time for adequate preparation.

Sincerely yours,

(Signed) Dan

William T. Faricy, Esquire
President
Association of American Railroads
Transportation Building
Washington 6, D. C.

Plaintiffs' Exhibit 41E

THE ASSOCIATION OF WESTERN RAILWAYS

PROCEEDINGS OF MEETING HELD IN ROOM 474
UNION STATION BUILDING, CHICAGO, ILLINOIS

SEPTEMBER 6, 1951

in re

No. MC-200 (Sub. No. 84) Riss & Company Inc.,
Extension -- Explosives (and other applications
assigned for hearing at Chicago, Ill., on September 17, 1951

ATTENDANCE:

R. G. Hodgkin, FTM, ACL Railroad, Wilmington, N. C.
R. J. Lehman, Gen. Atty. & Comm. Coun., AT&SF Ry., Chicago
H. R. Wright, FTM, AT&SF Ry., Chicago
R. J. Blagburn, GFA, B&O RR, Baltimore
G. E. Gustafson, WTM, B&M-MeCent. RR, 327 S. LaSalle St., Chicago 4
F. S. Myers, Mgr., C. T. R. - Motor Carrier Bureau, Chicago
T. M. Cook, Gen. Atty., C&EI RR, Chicago
C. D. Forth, Asst. Gen. Atty., C&IM Ry., Springfield, Ill.
R. O. Small, Asst. V. P. - Traffic, C&NW Ry., Chicago
H. A. Hoppe, Comm. Asst., C&NW Ry., Chicago
R. B. James, Comm. Atty., CB&Q RR, Chicago
P. B. Battey, GFTM, CB&Q RR, Chicago
T. H. Hoyer, Comm. Agt., CB&Q RR, Chicago
H. O. Malm, AGFA, COW Ry., Chicago
W. L. Ennis, Asst. to V. P., CMS&TP RR, Chicago
L. S. Hamilton, AGFA, CMStPP RR, Chicago
C. G. Metzler, Atty., CMStPP RR, Chicago
E. A. Tharp, FTM, CRIP RR, Chicago
B. C. Brile, Comm. Agent, CRIP RR, Chicago
C. A. Brennan, AGFA, D&R-W RR, 321 Bankers Bldg., Chicago
R. J. Hurst, ATM, EJ&E RR, Chicago
Hallan Huffman, Asst. Gen. Counsel, GN. Ry., St. Paul
R. W. Cronon, Asst. Gen. Solr., GN Ry., St. Paul
W. D. O'Brien, FTM, GN Ry., St. Paul
J. A. Behrle, AFTM, GM&O RR, Chicago 4
C. A. Sublett, AFTM, IC RR, Chicago
H. J. McCarthy, Dist. Traf. Mgr., KCS Ry., 1621 Bankers Bldg., Chicago 3
R. E. Sardy, Contract Agent, M&StL Ry., Minneapolis
R. C. Trovillion, Asst. V. P., M-K-T Lines, St. Louis
J. G. Blaine, Gen. Atty. & Comm. Counsel, M-K-T Lines, St. Louis
R. R. Chavis, GFA, M-K-T Lines, St. Louis
P. H. Coon, AGFA, MP Lines, St. Louis
A. O. Bjorklund, Gen. Atty., MStP&SSM RR., Minneapolis
K. J. Sherwood, AGFA, MStP&SSM RR., Minneapolis
J. L. Fortier, AFTM, Monon Ry., 608 S. Dearborn St., Chicago

ATTENDANCE (continued):

S. M. Dickerson, AGFA, NYC&StL Ry., Nashville, Tenn.
T. J. Gilhooly, Traf. Repr., New Haven RR, 327 S. LaSalle St., Chicago 4
Leroy Blue, AFTM, NYC System, Chicago
R. J. Murphy, Atty., NYC System, Chicago
L. J. Schirmer, AGFA, NYC&StL RR., Cleveland
H. P. Thrasher, Comm. Agent, M&W Ry., Roanoke, Va.
Conrad Olson, AGC, Nor. Pac. Ry., St. Paul, Minn.
R. E. Smith, GFTM, NP Ry., St. Paul
F. N. Bigelow, Mgr., Pac. SW RR Assn., San Francisco, Calif.
A. E. Johnston, AFTN, PRR, Chicago
C. A. Sturtevant, Comm. Agt., SAL RR., Norfolk, Va.
C. T. Collett, GTM, SP Co., Chicago
L. C. Adcock, Asst. to FTM, SOU Ry., Washington 13, D. C.
O. P. Wieland, CC to GFA, SL-SF Ry., St. Louis, Mo.
G. B. Matthews, VP, SSW Ry., St. Louis, Mo.
R. F. Williams, Asst. Supt. Transp., T&NO Ry., Houston, Tex.
J. J. Kerr, AGFA, TP&W RR, Peoria, Ill.
C. S. McDonald, Merch. T.M., T&P Ry., Dallas, Texas
W. H. Dana, Chairman, TCFB, Union Station, Chicago
J. J. Burchell, Asst. Gen. Atty., UP RR, Omaha
C. C. Beach, AFTM, UP RR, Omaha
A. H. Bell, AGFA, Wabash RR., St. Louis

Joseph H. Hays, Counsel
A. M. Mathews, Attorney
J. W. Nisbet, Attorney
Ed White, Attorney
J. D. Feeney, Jr., Attorney
F. E. Haas, Special Repr.
) Assn. of Western Rys., Chicago

The above named persons were in attendance at a conference in Room 474 Union Station Building, Chicago, Illinois on September 6, 1951. Purpose of the conference was to determine questions of policy and to make arrangements in connection with the defense of the carriers' interests as they would be affected by several pending applications by motor carriers for authority to transport explosives.

It was made clear that the carriers should exercise caution in the presentation of evidence to avoid conflict with carriers' interests in regard to the reparations cases. On motion the defense committee was directed to request the committee in charge of the reparations cases to designate a lawyer or other representative to work with this defense committee to avoid any possible conflict.

On motion duly made, seconded and carried the Law Department of The Association of Western Railways was designated as chairman of the defense committee, now composed of all western lines, with authority to designate counsel of member roads for active assistance and to employ such experts and to incur such additional expenses as is deemed necessary in the proper defense of these cases.

Pursuant to formal motion or common understanding the following program was agreed to:

(a) That additional time will be essential to the development and presentation of a proper case on behalf of the carriers. Representatives of the eastern lines and southern lines being present, it was agreed that the three regions would move separately in efforts to obtain additional time. It was suggested that we should seek an understanding under which the applicants would proceed with the presentation of their cases as scheduled beginning on September 17, 1951, but that at the conclusion of such testimony the rail carriers be given a reasonable length of time to present their case at a later hearing. It was understood that the accomplishment of this objective is probably vital to the outcome of the case. Attention is called to the fact that Decatur Transit Truck Line, in MC-85749 Sub. 4, is applying for authority to transport explosives in a case which will begin at Birmingham, Ala. on September 10, 1951. It was suggested that it might be advisable in that case to also seek opportunity to submit protestants' testimony at a later hearing.

(b) That the chairman call upon the Public Relations Committee for active assistance in arousing public interest in the situation.

(c) That an effort would be made to secure one or two public witnesses from each western state and that in doing so the chairman should call upon the chairman of the Legislative Committee in each state to work with the chairmen of the Traffic Committee in that state in procuring such public witnesses, it being understood that the expenses of such witnesses would be borne by the committee where necessary.

(d) That the defense committee undertake with the assistance of counsel in each state to determine the extent of local authority in the control of explosive traffic including a survey of existing state laws, city ordinances, and rules and regulations of state commissions.

(e) That the brotherhood organizations be invited to intervene as parties or to provide witnesses to be called by the carriers giving particular emphasis to the hazards resulting at grade crossings from the transportation of explosives by truck.

The southern lines were advised of the importance of securing public witnesses from Virginia and particularly the importance of the active support of the Virginia State Highway Department.

Attention was called to the existence of Joint Army and Air Forces Bulletin No. 12, under date of July 7, 1949, setting out rules and regulations to be followed by witnesses appearing in behalf of motor carrier applicants and prohibiting supporting testimony without formal clearance by superior officers. A copy of such bulletin was delivered to the chair and attention was called to the fact that a similar bulletin has been issued by the Navy. It was suggested that the chair endeavor to obtain a copy of such Navy regulation.

There had been circulated at the meeting a copy of a communication from the Commerce Counsel of the Bureau of Supplies and Accounts, Department of the Navy, apparently speaking on behalf of all three services, indicating the points at which the Defense Department would support truck service. While the points specified in such notice constituted a very material curtailment of the position which it had been expected the Department would take pursuant to statements at the pre-trial conference, it was pointed out that the motor carrier applications had not been amended in any way and that the applicant carriers in the aggregate are still seeking authority to serve points and places in virtually all parts of the country. While it is almost impossible to prepare operating testimony as to the adequacy of rail service at all points, it was thought desirable to proceed as rapidly as possible with the preparation of such testimony as to the points to or from which the Defense Department

will support truck service. Consequently assignments as shown below were made, the railroad shown opposite the shipping point to act as chairman and other carriers serving such points to cooperate to the extent called upon in the preparation of a necessary showing and to furnish a witness or witnesses to submit testimony and exhibits at the forthcoming hearing if necessary

Hastings, Nebr.	- UP
Sidney, Nebr.	- UP
Burlington, Ia.	- CB&Q
Savannah, Ill.	- CB&Q
Crane, Ind.	- CMStPP
Joliet, Ill.	- GM&O
Pauline, Kans.	- AT&SF

Such testimony should show to the extent feasible the following:

The amount of explosives traffic to and/or from such points and where possible the revenue involved.

The physical facilities available at the origin points for handling such traffic.

If possible, time in transit on typical movements to and/or from such points.

Details respecting special handling and whether such traffic is given preferred handling.

Availability of suitable equipment and whether the origin carriers have been able to meet all orders for cars at origin points (in this connection show typical period showing orders received and cars available and cars remaining on hand, if any).

Whether or not there presently is truck service available to and/or from such origins and, if so, whether or not there has been any curtailment of volume of rail traffic handled by reason of such truck service.

It would be appreciated if the chairman line at each such point would advise the undersigned as to the truck lines now having authority to serve these particular points.

It was agreed that Dr. Parmalee of the AAR should be called upon to furnish economic testimony, that the Western Statistical Bureau be called upon to furnish assistance to the extent feasible, and that Mr. Gass of the Car

Service Division of the AAR be requested to furnish supporting testimony, particularly as to the extent of the job done by the railroads during the last war.

Constructive suggestions are solicited and it would be appreciated if they would be forwarded to the undersigned.

Very truly yours,

Joseph H. Hays

Counsel

Copies to -

Chief Executives - Western Lines
Persons in attendance
Persons interested in Motor Carrier Matters

 Plaintiffs' Exhibit 41F

MEMORANDUM

On Monday, September 17, 1951, at 9:30 o'clock, A. M., Daylight Time, at the Palmer House in Chicago, the Interstate Commerce Commission, through one of its examiners will begin a series of public hearings. These hearings will be upon a number of applications by motor carriers by which they seek authority under the Interstate Commerce Act to transport explosives. (Generally described as explosives A, B and C in Agent H. A. Campbell's Tariff No. 8 on file with the I. C. C. This description includes virtually all types and kinds of munitions and explosive materials.) There is annexed hereto (Sheet 1) a list showing the names of the respective applicants and the docket numbers of their cases. Most of these applicants are motor common carriers who now have authority to engage in the transportation of general commodities. For the most part these applications are for the enlargement of existing franchises so as to authorize the movement of explosives and so as to extend lines between one or more points now served by them and various government installations and commercial plants where such commodities now do, or will, originate or terminate in volume. In each instance the service sought to be rendered by motor carrier is supplemental to service now available either by other forms of transportation or by other motor carriers or both.

The applicants in all of these cases seek certificates of Public Convenience and Necessity which the Commission has authority to issue after proper application, public hearing and a finding that the service sought to be rendered is required by the present or future public convenience and necessity. Such certificates, if issued, would have two important attributes which should be understood; first, they have the force and effect of franchises and are permanent in character, and second, although applicant may have only a limited number of units of equipment at the time of the hearing, the certificate does not, and the commission cannot, limit the number of units which might subsequently be placed in service if the certificate is granted. The Commission has power under the law to issue, in emergency situations and without notice or hearing, temporary authority to operate which may continue for as long as 180 days and which may be renewed by the Commission without limit. These applications are not based upon any asserted emergency and none of them is for such temporary

authority. What is sought in each of these cases is a permanent franchise to operate an unlimited number of motor vehicles.

The announced program of the Interstate Commerce Commission is to hear the application of Riss & Company, Inc. first, to close the record in that case, and to then consolidate and consider in a single hearing all of the other pending applications. It is understood that, in addition to the cases shown on the annexed list there are approximately twenty other applications of a similar character which will be consolidated and heard with them. It is also understood that a witness or witnesses for the Department of Defense will submit testimony in the Riss Case, that such testimony will not necessarily be limited to points sought to be served by the applicant Riss, and that such testimony, exhibits and cross-examination, with reference thereto, will be incorporated into and made a part of the record in each of the other cases when they are called immediately after the record is closed in the Riss Case. There is annexed hereto a sheet (Sheet 3) upon which is set forth, for ready reference, the national transportation policy as declared by Congress at the beginning of the Interstate Commerce Act. It should be noted that all of the provisions of the Interstate Commerce Act are to be construed and applied so as to give force and effect to that declaration. Any finding of public convenience and necessity must be made in the light of the requirements of that declaration. One of the salient objectives of the act is the promotion of safe transportation service and public safety ranks high in the activities of the Commission.

Among other things some of the opponents of these applications will contend that the inherently dangerous character of the commodities involved requires that the Commission deny the use of public highways in interstate commerce for the transportation of such commodities except after clear proof of real need for their movement and clear proof that no other means of transportation less hazardous to the general public is available for the transportation service required. The railroads will contend that they are fully capable of moving all of the explosive traffic offered or contemplated, that in time of war or emergency or threatened emergency such traffic is given priority, and will point to their magnificent record of performance during World War II as

due and complete proof of their ability to perform and to do so with the greatest safety. They will contend that the granting of such applications would not only be injurious to the economic welfare of the public and the rail carriers but would expose the users of highways and streets and those who occupy dwellings and other buildings in proximity thereto to great and unnecessary hazard. They will further assert that the movement of a substantial volume of traffic in explosives over the public highways would unduly and improperly aggravate the already grave danger which exists at railway highway crossings at grade.

It is believed that the support by the Department of Defense of certain of these applications, or its support for truck service from certain of the points involved, poses the most serious problem in connection with these cases. It is inconceivable that the Interstate Commerce Commission would seriously consider granting the requested authority without a showing of some military need for the additional service. On the other hand, it is to be expected that the Commission would give most sympathetic consideration to the genuine needs of the Department of Defense, especially under present circumstances. It is not known at what level in the Department of Defense the decision has been made to support some or all of these applications, and it is certainly not known what consideration has been given in the Defense Department by those who set such policy as to either the great public hazard to which the public would be thus exposed or the withering economic effect of such policies upon existing transportation facilities and the resulting ability of the railroads to render the transportation service so vital to the national defense in all its aspects.

There is annexed hereto (Sheet 4) a table showing, with reference to rail traffic in explosives for the years 1942 through 1950, the tons originated and the freight revenue therefrom. Figures for the year 1951 are not immediately available. It is known, however, that there has been a tremendous increase in the movement of such commodities and that the volume of such traffic continues to grow. A very substantial volume of such traffic is now moving by truck in some parts of the country.

The only persons affirmatively interested in these applications are the Department of Defense as its real interest may appear and the limited

number of motor carriers who are applicants. It is to be noted that these carriers are already engaged in business as motor common carriers, that the proposed operations would constitute expansion of their existing operations, would contribute further to existing highway congestion and damage and especially would require the allocation of further quantities of scarce materials for the construction of the additional trucks, trailers, tires, etc. and the consumption of the additional petroleum and manpower necessary to keep them in motion.

 Plaintiff's Exhibit 41G

SHEET 1

APPLICATIONS ON AGENDA OF
THE PRE-HEARING CONFERENCE

MC-200	(Sub No. 84)	Riss & Company, Inc.
MC-730	(Sub No. 25)	Pacific Intermountain Express Co.
MC-35628	(Sub No. 170)	Interstate Motor Freight System
MC-52709	(Sub No. 41)	Ringsby Truck Lines, Inc.
MC-52709	(Sub No. 42)	Ringsby Truck Lines, Inc.
MC-58948	(Sub No. 53)	Union Transfer Company d/b/a Union Freightways
MC-58948	(Sub No. 54)	Union Transfer Company d/b/a Union Freightways
MC-68909	(Sub No. 35)	Decatur Cartage Co.
MC-102682	(Sub No. 224)	Hughes Transportation, Inc.
MC-105807	(Sub No. 11)	Matthew Leo McKeone, Sr., Matthew Leo McKeone, Jr., Joseph James McKeone, and Albert Joseph McKeone, d/b/a Red Ball Transfer Company

* We are informed additional cases will probably be included in the consolidated hearing.

No. MC-200 (Sub.-No. 84)
RISS & COMPANY, INC., EXTENSION - EXPLOSIVES
(AND OTHER APPLICATIONS ASSIGNED FOR HEARING AT CHICAGO, ILLINOIS ON SEPTEMBER 17, 1951)

August 31, 1951

NOTICE TO THE INTERSTATE COMMERCE COMMISSION AND TO THE PARTIES:

The Department of Defense will be represented at the above mentioned proceedings. In general, the government's evidence in these proceedings will relate to a military need for motor-carrier services for the transportation of:

1. ammunition and explosives and component parts thereof:

a. between points in Indiana and Ohio, on the one hand, and on the other hand, points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island and Virginia:

b. between, to or from military installations at or near the following points:

(1) between Earle, New Jersey on the one hand, and on the other hand, Hingham, Massachusetts and Yorktown, Virginia

(2) at Hastings, Nebraska, and between Hastings, on the one hand and on the other hand, Crane, Indiana and points east thereof.

(3) from Sidney, Nebraska, Burlington, Iowa, Savannah, Illinois and Joliet, Illinois to Madison, Indiana and:

2. general commodities, to and from the 832nd Air Force Specialized Depot at Pauline, Kansas in connection with presently authorized services to and from Topeka, Kansas.

The government's evidence in these proceedings will be in support of a need for service as distinguished from support of a particular carrier or carriers.

(Signed) Clement T. Mayo
CLEMENT T. MAYO, Commerce Counsel
Bureau of Supplies and Accounts,
Department of the Navy,
Washington 25, D. C.

of counsel for the
Department of Defense

Plaintiffs' Exhibit 411

Sheet 3

THE INTERSTATE COMMERCE ACT
National Transportation Policy

[Added September 18, 1940.] [U.S. Code, title 49, notes preceding secs. 1, 301, 901, and 1001.] It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; - all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Plaintiffs' Exhibit 41J

Sheet 4

STATEMENT SHOWING TONS ORIGINATED AND FREIGHT REVENUE FROM AMMUNITION AND EXPLOSIVES - CLASS I CARRIERS UNITED STATES - YEARS 1942 THROUGH 1950

Year (1)	Tons Originated (2)	Freight Revenue (3)
1942	5 337 179	$ 144 828 031
1943	10 634 306	266 190 629
1944	15 259 853	432 314 992
1945	13 375 162	409 614 706
1946	2 228 581	73 243 047
1947	631 028	18 778 877
1948	691 225	24 248 610
1949	528 117	19 753 289
1950	1 498 083	84 062 227

NOTE: -- Years 1942 through 1946 I. C. C. Class 662.
Years 1947 through 1950 I. C. C. Class 631.

SOURCE: For years 1942 through 1949 from I. C. C. Annual publications "Freight Commodity Statistics".
Year 1950 from quarterly reports Statement Q-500.

 Plaintiffs' Exhibit 41K

THE ASSOCIATION OF WESTERN RAILWAYS

September 7, 1951

Mr. W. Y. Blanning, Director
Bureau of Motor Carriers
Interstate Commerce Commission
Washington 25, D. C.

RE:	MC-200	(Sub-No. 84)	Riss & Company, Inc.
	MC-222	(Sub-No. 14)	Liberty Motor Freight Lines, Incorporated
	MC-730	(Sub-No. 25)	Pacific Intermountain Express Co.
	MC-954	(Sub-No. 34)	Mid-States Freight Lines, Inc.
	MC-1091	(Sub-No. 4)	Garford Trucking, Inc.
	MC-25567	(Sub-No. 27)	Hancock-Trucking, Incorporated
	MC-35628	(Sub-No. 170)	Interstate Motor Freight System
	MC-42329	(Sub-No. 100)	Hayes Freight Lines, Inc.
	MC-52318	(Sub-No. 33)	Luper Transportation Co. of Oklahoma
	MC-52318	(Sub-No. 34)	Luper Transportation Co. of Oklahoma
	MC-52709	(Sub-No. 41)	Ringsby Truck Lines, Inc.
	MC-55874	(Sub-No. 12)	Independent Truckers, Inc.
	MC-58948	(Sub-No. 53)	Union Transfer Co. d/b/a Union Freightways
	MC-58948	(Sub-No. 54)	Union Transfer Co. d/b/a Union Freightways
	MC-59681	(Sub-No. 41)	Dakota Transfer & Storage Company
	MC-64994	(Sub-No. 9)	Henniss Freight Lines, Inc.
	MC-68909	(Sub-No. 35)	Decatur Cartage Company
	MC-70451	(Sub-No. 128)	Watson Bros. Transportation Co., Inc.
	MC-102682	(Sub-No. 224)	Hughes Transportation, Inc.
	MC-105807	(Sub-No. 11)	Matthew Leo McKeone, Sr., Matthew Leo McKeone, Jr., Joseph James McKeone, & Albert Joseph McKeone d/b/a Red Ball Transfer Company
	MC-108158	(Sub-No. 31)	Mid-Continent Freight Lines, Inc.

Dear Mr. Blanning:

We have been requested to participate on behalf of all of the Western Railroads in the above entitled proceedings which are presently set for hearing at Chicago, September 17, 1951 before Examiner B. E. Stillwell.

All of these applications involve requests for authority to transport dangerous explosives and dangerous articles and when considered collectively, involve proposed service to, from and between a vast number of points in not less than 40 states. While the Department of the Navy, through its Commerce Counsel, Clement T. Mayo, has indicated in writing under date of August 31, 1951, the extent to which the Department of Defense would support a need for service which is somewhat limited from a point or scope standpoint when compared to

the applications collectively, nevertheless said applications are still pending in their original form insofar as we know and the issues as raised by such applications are still before the Commission.

These proposals are of vital importance to the Western Railroads. They have been, are handling, and must be in a position to handle tremendous volumes of explosive traffic. The revenue from this traffic is deemed to be of such magnitude that its loss would impair the ability of the carriers to adequately serve the shippers of other commodities and to render the character of service requisite to the national defense. Further, these proposals to transport explosives and dangerous articles over the highways are of concern to the rail carriers because of the hazard presented at grade crossings. For these and other reasons, it is anticipated that they will vigorously oppose these applications and present a strong showing in opposition including testimony of public witnesses.

As we understand it, it is now proposed that the application of Riss and Company, Inc. would be heard first and that all of the other above named applications would be heard thereafter on a consolidated record, any pertinent testimony, cross-examination, and exhibits of witnesses for the Department of Defense in the Riss and Company case to be incorporated by reference in the consolidated record made in the other proceedings. In view of the broad scope of these applications, it is impossible for the Western Railroads properly to prepare a showing along the lines they now have in mind until such time as each applicant has rested its case. Only then will they be sufficiently apprised of the issues involved and be in a position to prepare a showing and adequately protect their interests and make their defense.

Therefore, we hereby request that a further hearing in the above-described proceedings be held preferably at Chicago, at a date subsequent to the close of the September 17 hearing and after each of the above-named applicants has rested its case. In this connection and so that we may have time within which to make preparation and prepare documentary evidence wherever possible, which we believe will tend to shorten the time required for the

presentation of our showing, we should like to have a period of at least 30 days allowed between the time the last applicant has rested its case and the further hearing herein requested.

We sincerely hope this request will receive favorable consideration and that we will have advice concerning the same at the earliest possible date in view of the short time remaining between now and the time the hearings are scheduled to open.

Very truly yours,

(signed) JOSEPH H. HAYS

Counsel

cc: Applicant or applicant's
attorney in each proceeding.

 Plaintiffs' Exhibit 41L

THE ASSOCIATION OF WESTERN RAILWAYS

September 13, 1951

Subject: MEETING HELD IN ROOM 474, UNION STATION BUILDING, CHICAGO, ILLINOIS, SEPTEMBER 6, 1951 -- in re:

No. MC-200 (Sub. No. 84) Riss & Company, Inc., Extension - Explosives (and other applications assigned for hearing at Chicago, Illinois, on September 17, 1951).

To Persons Previously Addressed:

In response to our request for additional time in these matters, we today received from Mr. W. Y. Blanning, Director, Bureau of Motor Carriers, Interstate Commerce Commission, a Western Union message reading as follows:

> "Re request on behalf of railroads emsee 200 Sub-84, Riss and Company and other explosives applications set for September Seventeenth, Chicago. Ruling deferred. Request may be renewed before Examiner after conclusion applicant's presentation in Riss case. Examiner has authority to rule."

Further steps are being taken to obtain favorable action on our request for further hearing in all of these proceedings at a date subsequent to the close of applicants cases, but, of course, we cannot predict what the Commission will do. Therefore, it is necessary to make every effort toward the best possible preparation in the limited time allowed us in order to present railroad evidence along the lines indicated in my previous letter reporting proceedings of the meeting held here on September 6, such presentation to be made some time during the week of September 17. We will advise you a definite date when we may begin our case just as soon as we can.

Very truly yours,

(signed) JOSEPH H. HAYS

Counsel

Copies to -
Chief Executives - Western Lines
Persons in attendance
Persons Interested in Motor Carrier Matters

BRIEF COMMODITY AND TERRITORIAL DESCRIPTIONS
IN APPLICATIONS IN AUGUST 23 ORDER:

MC-200 (Sub 84) Riss & Company, Inc., Common Carrier, Regular routes.

General commodities including explosives

Between Kansas City, Mo.-Kans., and Lawrence, Kans., serving Sunflower Ordnance Works;

From Tinker Field near Oklahoma City; Camp Carson near Colorado Springs; Topeka Air Base, near Topeka, Kans; and the Pueblo Ordnance Depot, near Pueblo, Colo., as off-route points in connection with applicant's presently authorized operations to and from Oklahoma City, Colorado Springs, Topeka and Pueblo, respectively;

From Cornhusker Ordnance Works near Grand Island, Nebr., as off-route point in connection with applicant's presently authorized operations.

Dangerous explosives, etc.

To, from, and/or between all points presently authorized to be served in MC-200 and Subs, and including authority to serve to, from and/or between all points in Iowa, Missouri, Illinois, Indiana, Ohio, Virginia, Maryland, West Virginia, Pennsylvania, New York, New Jersey, Massachusetts, Rhode Island, Connecticut, Delaware, and District of Columbia, as intermediate and off-route points to presently certificated and claimed routes;

Between Crane, Indiana on the one hand and on the other, Naval Mine Depot, Yorktown, Va; Navy Ammunition Depot, St. Julien's Creek, Portsmouth, Va.; Naval Air Station, Norfolk, Va., and Earle, New Jersey;

To and from Naval Ammunition Depot near Hastings, Nebr. in connection with applicant's presently authorized routes;

Between Naval Ammunition Depot near Hastings, Nebr. on the one hand, and on the other, all points in Iowa, Missouri, Illinois,

Indiana, Ohio, West Virginia, Virginia, Maryland, Pennsylvania, New Jersey, New York, Rhode Island, Massachusetts, Connecticut, Delaware, and District of Columbia, and

Serving Sioux Ordnance Works near Sidney, Nebraska as off-route point in connection with applicant's presently authorized service.

MC-730 (Sub 25) Pacific Intermountain Express Co., Common Carrier, Reg. routes.

All classes of explosives

Between all points in Colorado, Illinois, Indiana, Kansas, and Missouri authorized to applicant in MC-730 and Subs, thereunder.

General commodities including explosives

Serving the 832nd Air Force Specialized Depot near Pauline, Kans. as an off-route point in connection with presently authorized operations.

MC-1091 (Sub 4) Garford Trucking, Inc., Common Carrier, Reg. & irreg. routes.

All classes of explosives

Between Bound Brook, New Jersey and Boston, Massachusetts, over regular route;

Between various specified points in Massachusetts, Pennsylvania, New Jersey, Connecticut, Rhode Island, New York, Maryland, over irregular routes.

MC-25567 (Sub 27) Hancock-Trucking, Inc. Common Carrier, Regular routes

All classes of explosives

Between points in Indiana, Illinois, Michigan, Wisconsin, Missouri, Kentucky, New York, Pennsylvania, West Virginia, and Ohio. (Any duplication of present authority to be excluded)

MC-35628 (Sub 170) Interstate Motor Freight System, Common Carrier, Reg. routes

All classes of explosives

Over applicant's presently authorized routes in Delaware, Illinois, Indiana, Kentucky, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, West Virginia, Wisconsin and District of Columbia as

described in certificates in MC-35628 and Subs serving Navy Bases at Crane, Indiana, Hingham, Massachusetts, and Army Base at Letter Kenny, Pennsylvania, as off-route points.

MC-52318 (Sub 34) Luper Transportation Company, Common Carrier, Irregular routes

All classes of explosives

Between points in Oklahoma, Missouri, Kansas, Indiana, Texas, Illinois, Louisiana, Alabama, Mississippi, Florida, Arkansas, Nebraska, Tennessee, Kentucky, and Wisconsin. (All duplicating authority to be eliminated)

MC-55874 (Sub 12) Independent Truckers, Inc., Common Carrier, Regular route

All classes of explosives

Between Chicago, Illinois and Pueblo, Colorado, over stated routes serving the intermediate and off-route points of East Chicago, Indiana, Amboy Shell Loading Plant near Amboy, Ill., Chicago Ordnance Plant near Chicago, Elwood Ordnance Depot near Elwood, Illinois, Green River Ordnance Depot near Rock Island, Ill., Joliet Arsenal near Joliet, Ill., Kankakee Ordnance Works near Kankakee, Ill., Lincoln Ordnance Works near Springfield, Ill., Rock Island Ordnance Depot near Rock Island, Ill., Rockford Arsenal Plant near Rockford, Ill., Savannah Ordnance Depot near Savannah, Ill., Des Moines Ordnance near Des Moines, Iowa, Iowa Ordnance Plant near Burlington, Iowa, Sioux City, Iowa, Beatrice, Nebraska, Cornhusker Ordnance Plant near Grand Island, Nebr., Crete, Nebr., Grand Island, Nebr., Lincoln, Nebr., Nebraska Ordnance Plant near Wahoo, Nebraska, Nebraska City Nebraska, Omaha, Nebr., Sioux Ordnance Depot near Sidney, Nebr., U.S. Naval Ammunition Depot, near Hastings, Nebraska, Avondale Ordnance Depot near Avondale, Colo., Buckley Field near Denver, Colo., Colorado Springs, Denver, Fort Collins, Greeley, and Manzanala, Colo., Pueblo Ordnance Depot near Pueblo, Remaco Arsenal near Denver, Colo., Rocky Mtn. Arsenal near Derby, Colo. and Sterling, Colorado.

MC-58948 (Sub 53) Union Freightways, Common Carrier, Regular route

Classes A and B Explosives

From, to and/or between all points in Colorado, Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, and Wyoming, authorized in certificates in MC-58948 and Subs.

MC-58948 (Sub 54) Union Freightways, Common Carrier

Classes A and B Explosives

Serving Nebraska Ordnance Plant near Mead, Nebr., as an off-route point in connection with authority sought in the Sub 53 proceeding.

MC-59681 (Sub 41) Dakota Transfer & Storage Company, Common Carrier,

Classes A and B Explosives

Over all routes, regular and irregular, from, to and/or between specified points in Illinois, Indiana, Iowa, Minnesota, North Dakota, Wisconsin, and Montana authorized in certificate MC-59681 and Subs thereunder.

MC-64994 (Sub 9) Henniss Freight Lines, Common Carrier, Irregular route

All classes of explosives

Between points in Ohio, Pennsylvania, West Virginia, Illinois, Michigan, Indiana, Kentucky, Tennessee, South Carolina, North Carolina, Virginia, Maryland, New Jersey, Delaware, and District of Columbia.

MC-68909 (Sub 35) Decatur Cartago Co., Common Carrier, Regular routes

Dangerous explosives

Between points presently authorized in Illinois, Indiana, Kentucky, Missouri, and Ohio as described in certificate MC-68909 and Subs thereunder.

MC-70852 (Sub 128) Watson Bros. Transportation Co., Inc., Common Carrier

All classes of explosives

Between points in Arizona, Arkansas, California, Colorado, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minn., Mo., Nebr., Nevada, New Jersey, New Mexico, N. Car., Ohio, Okla, Oregon, Penn., S. C.,

Plaintiff's Exhibit 41M
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South Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming. (Duplication with present authority to be eliminated.)

MC-105807 (Sub 11) Red Ball Transfer Co., Common Carrier, Regular and Irregular Routes

All classes of explosives

Regular Routes:

Between Omaha, Nebraska and Kansas City, Missouri;

Between Omaha and Lincoln, Nebraska;

Between Nebraska City, Nebraska and Sidney, Iowa;

Between Hiawath, Kansas and St. Joseph, Missouri;

Between Fairmont, Nebraska and Grand Island, Nebraska;

Between Lincoln, Nebraska and Henderson, Nebraska;

Between Sioux City, Iowa and Omaha, Nebraska;

Between Omaha, Nebraska and Chicago, Illinois;

Between Sioux City, Iowa and Bancroft, Nebraska;

Irregular Routes:

Between points in the Chicago, Illinois commercial zone other than Chicago on the one hand and on the other, points in Illinois within 40 miles of Chicago;

Between all points proposed to be served in the proposed operations on the one hand and on the other, the Naval Ammunition Depot near McAllister, Oklahoma; Naval Ammunition Depot near Crane, Indiana; Earle, New Jersey and points within 15 miles thereof; Norfolk, Virginia and points within 35 miles thereof; Lee Hall, Virginia; Dahlgren Proving Grounds near Dahlgren, Virginia, Hingham, Massachusetts and points within 15 miles thereof; Naval Ammunition Depot near Shumaker, Arkansas; Cornhusker Ordnance Works near Grand Island, Nebraska; Sunflower Ordnance Works near DeSota, Kansas; Kansas Ordnance Works near Parsons, Kansas; and PanTex Ordnance Works near Amarillo, Texas;

Between Naval Ammunition Depot near McAllister, Oklahoma; Naval Ammunition Depot near Crane, Indiana; Earle, New Jersey and points within 15 miles thereof; Norfolk, Virginia and points within 35 miles thereof; Lee Hall, Virginia, Dahlgren Proving Grounds near Dahlgren, Virginia,

Hingham, Massachusetts and points within 15 miles thereof; Naval Ammunition Depot at Shumaker, Arkansas; Cornhusker Ordnance Works near Grand Island, Nebraska; Sunflower Ordnance Works near DeSota, Kansas; Kansas Ordnance Works near Parsons, Kansas; and PanTex Ordnance Works near Amarillo, Tex. (NOTE: The authority applied for above embraces a considerable portion of authority already applied for in applicant's Sub 10 proceeding.)

MC-108158 (Sub 31) Mid-Continent Freight Lines, Inc., Common Carrier

All classes of explosives

Over applicant's presently authorized regular and irregular routes in Oklahoma, Indiana, Ill., Pennsylvania, Ohio, Mo., Kansas, Texas, New York, Wisconsin, Minn., Iowa, West Virginia, Virginia, New Jersey, Maryland, Massachusetts, and Rhode Island including off-route service to, from and between:

Savanna (near McAllister) Oklahoma;
Camp Gruber (near Braggs), Oklahoma;
Lee Hall, Va.;
Dahlgren Proving Grounds, Va.;
Naval Ammunition Depot, Yorktown, Va.;
Naval Ammunition Depot, St. Julian's Creek, Portsmouth, Va.;
Naval Air Station, Norfolk, Va.;
Earle (near Fort Monmouth), N. J.;
Naval Ammunition Depot, Hingham, Mass.;
Kingsbury (Ind.) Ordnance Plant (near Kingsbury, Ind.);
Naval Ammunition Depot, Crane, Ind.;
Indiana Arsenal (near Charlestown, Ind.);
Jefferson Proving Grounds (near Madison), Ind.;
Elwood Ordnance Plant, Elwood, Ill.;
Green River Ordnance Plant (near Rock Island,) Ill.;
Joliet Arsenal (near Joliet), Ill.;
Kankakee Ordnance Plant, (near Kankakee,) Ill.;
Rockford Ordnance Plant (near Rockford,) Ill.;
The Savanna Ordnance Plant, Savanna, Illinois;
Amboy Shell Loading Plant (near Amboy), Ill.;
Great Lakes Naval Training Station, Great Lakes, Ill.;
Naval Ordnance Depot, Indian Head, Md.;
Naval Air Station, Quonset Point, R. I.;
Letterkenny Ordnance Depot (near Chambersburg), Pa.;
and government installations within 35 miles of named points in conjunction with its presently authorized service.

MC-222 (Sub 14) Liberty Freight Motor Lines, Inc., Common Carrier, Irregular routes

All classes of explosives

Between points in Illinois, Indiana, Missouri, and Ohio on the one hand and on the other, points in Pennsylvania, New York, West Virginia, Virginia, Maryland, New Jersey, Massachusetts, Rhode Island and Connecticut.

 Plaintiff's Exhibit 41-N

BRIEF COMMODITY AND TERRITORIAL DESCRIPTIONS
IN APPLICATIONS IN SEPTEMBER 11 ORDER:

MC-966 (Sub 6) Capitol Truck Lines, Inc., Common Carrier

General commodities including all classes of explosives

Serving the 832nd Air Force Specialized Depot at Pauline, Kansas as an off-route point in connection with presently authorized regular route operations to and from Topeka, Kansas

MC-31389 (Sub 24) McLean Trucking Company, Common Carrier, Irregular routes

All Classes of explosives

Between military installations at or near Earle, New Jersey on the one hand and on the other, at or near Yorktown, Virginia

MC-43177 (Sub 15) B B & I Motor Freight, Inc., Common Carrier, Regular routes

Class A & B Explosives

Between Chicago, Illinois and Evansville, Indiana;

Between Louisville, Kentucky and Evansville, Indiana;

Between specified points in Indiana;

Between points in the Chicago, Illinois commercial zone.

MC-58948 (Sub 57) Union Freightways, Common Carrier

Classes A and B Explosives

Serving the 832nd Air Force Specialized Depot at or near Pauline, Kansas as an off-route point in connection with applicant's presently authorized regular route operations.

Plaintiff's Exhibit 42
Page one

THE ASSOCIATION OF WESTERN RAILWAYS
Law Department
Chicago 6, Illinois

September 28, 1951

PROCEEDINGS OF CONFERENCE IN ROOM
474 UNION STATION BUILDING
CHICAGO, ILL., SEPTEMBER 27, 1951
in re

No. MC-200 (Sub. No. 84) Riss & Company, et al

The attached list of persons attended a conference in Room 474 Union Station Building, Chicago, Illinois on September 27, 1951.

It was agreed that state traffic and state legislative chairmen in working together in the respective states should also collaborate with the state legislative representatives of brotherhood groups in their approach to public witnesses.

It is understood that two public witnesses will be secured, if possible, for each Western state. When the contact has been made advice to that effect is to be furnished this office, with copy to Mr. Masterson, at the respective addresses shown on the attached list.

Regarding other truck applications to transport explosives, it is understood that effort will be made to obtain postponement of hearings on all other cases beyond the conclusion of the hearings in the Riss group. On cases which have already been set but not yet heard, this office will make a motion for postponement upon receipt of such request from the chairman of the defense committee. In event it would be more appropriate for the brotherhoods to make this motion, we will advise them to that effect.

It is suggested that the person to whom responsibility is assigned for contacting shipper witnesses on the economic phase should collaborate in the approach with the local representatives of other roads at common points.

A special presentation on special expedited service furnished by railroads in the movement of explosives during World War II and the character of such service now available with illustrations is to be prepared. The committee to make such preparation will be composed of the PRR, the GN, and the SP,

with Mr. Wickes of the Pennsylvania acting as chairman. Mr. Cronon will act for the Great Northern and a lawyer for the Southern Pacific to handle such matters is to be named by the SP.

The Brotherhood of Locomotive Engineers will take the chairmanship, with the help of the other brotherhoods, on the presentation of data as to the special hazards at grade crossings from the truck movement of dangerous explosives.

CB&Q (Mr. Russell James) was appointed chairman of the committee for western lines to secure data on accidents with respect to trucks transporting explosives, general trucking, and particularly accidents as reported to the Commission by each of the applicants. An eastern representative will be appointed by Mr. Masterson. Mr. James and his eastern associate will call upon the state organizations for assistance from state officials on special data as to truck accidents.

Central Territory Railroads will undertake to secure an official witness from the New York Port Authority or some other official body with respect to the Holland Tunnel accident in 1949.

The Eastern roads (Mr. Masterson) are to undertake to procure and organization the presentation of data as to the increase in truck accidents and in percentage of total accidents by trucks on the Pennsylvania Turnpike, as well as to the underlying reasons for the exclusion from such Turnpike of trucks transporting dangerous explosives.

The chairman line at each point supported in Government testimony, and at each additional point sought to be served in any of the applications which is an important shipping point, is to undertake the responsibility for the preparation of evidence as to rail schedules, railroad performance, and the availability of cars and our record in supplying same. In this connection where special service was requested and facts are shown on any of the documents, that material is to be prepared by the chairman line and cleared through the committee on expedited service headed by Mr. Wickes, which committee was mentioned above.

Testimony and/or statements, as well as exhibits, are to be secured with respect to the bridge installations shown below by the road shown opposite:

Tri Cities	- Rock Island
St. Louis	- Wabash
Huey Long	- T&NO
Ohio River	- Monon

Bridge testimony should show schools, hospitals, crossings, factories, etc. and the general hazard involved.

Expert witnesses on explosives will be contacted by Messrs. Lehman, Wickes and Ragland and furnished Messrs. Hays and Masterson.

Dr. Parmalee of the A.A.R. will be contacted by the A.W.R. for economic testimony.

The AWR will undertake to prepare a petition to the Commission to require the applicant in each instance to produce his route maps for explosives movements, records of reportable accidents, and other pertinent data.

The state committees will be asked to check records in all states for law violations (overload, speed, etc.) by all applicants.

Evidence is to be developed on trip leasing of fruit trucks hauling explosives in a westerly direction and returning east loaded with fruit.

A comparison should be included in the evidence by each line serving an important shipping point showing not only the current adequacy of facilities but comparison of current capacity with that during World War II.

The following Steering Committee of Counsel for western lines is to be furnished with prepared statements of public witnesses as they become available but not later than October 15th:

AT&SF
GN
CRIP
CB&Q

All other material is to be furnished not later than October 22nd, statements by eastern lines to be submitted to Mr. Masterson and by western lines to AWR.

JOSEPH H. HAYS

Attendance

D. A. Baumgartner, Asst. Supt. Transp., AT&SF, Chicago

R. J. Lehman, Gen Atty. & CC, AT&SF, Chicago

H. R. Wright, FTM, AT&SF, Chicago

M. E. Perrine, Asst. Ch. Rate Clerk, B&O RR, Chicago

G. E. Gustafson, WTM, B&M-MeC RR, 327 S. LaSalle St., Chicago

W. D. Wakeman, GWTA, CRRofNJ, 105 W. Adams St., Chicago

E. V. Hill, Chairman, CTR-FTC, Rm. 1100, 22 W. Madison St., Chicago

F. S. Myers, Mgr.-Motor Car. Bur., CTR-FTC, 22 W. Madison St., Chicago

*M. A. Smith, GFA, C&EI RR, 332 S. Michigan Ave., Chicago

J. F. McWilliams, C&EI, 332 S. Michigan Ave., Chicago

E. J. Mueller, Asst. Gen. Com. Agent, C&NW Ry., Chicago

R. O. Small, AVP, C&NW Ry., Chicago

P. G. Bohlsen, AFTM, CB&Q RR, Chicago

G. A. Hoffelder, FTM, CB&Q RR, Chicago

F. A. Wisberg, CTM, CI&L Ry., 1134 Board of Trade, Chicago

W. L. Ennis, A. to V.P., CMStP&P RR, 349 N. Jefferson Ave., Chicago

F. W. Maronn, c/o CMStP&P RR, 765 Union Station, Chicago

M. L. Cassell, Gen. Atty., CRIP Ry., Chicago

C. A. Brennan, AGFA, D&RGW RR, 2321 Bankers Bldg., Chicago

F. X. Masterson, Mgr., Motor Car. Bur.-East. Ter. RR's, 1 Park Ave., New York

R. J. Hurst, ATM, EJ&E RR, 208 S. LaSalle St., Chicago

J. C. Ashton, Atty., Frisco Lines, St. Louis, Mo.

A. J. Baumann, Comm. Counsel, Frisco Ry., St. Louis, Mo.

*E. G. Nahler, VP & GC, Frisco Lines, St. Louis, Mo.

H. V. Cook, GFA, Frisco Lines, St. Louis, Mo.

R. W. Cronon, Asst. Gen. Solr., GN Ry., St. Paul

J. A. Behrle, AFTM, GM&O RR, 230 S. Clark St., Chicago

C. A. Sublett, AFTM, IC RR, Chicago

H. J. McCarthy, DTM, KCS Ry., 1621 Bankers Bldg., Chicago

R. E. Hardy, Contract Agt., M&St. L. Ry., Minneapolis

P. H. Coon, AGFA, MP Lines, St. Louis

R. R. Chavis, GFA, MKT RR., St. Louis

H. D. Boynton, CommCounsel, New Haven RR, 54 Meadow St., New Haven

E. J. Kewitz, Traf. Repr., New Haven RR, 327 S. LaSalle St., Chicago

*M. R. Garrison, FTM, NYC RR, 466 Lexington Ave., New York

*D. S. Mackie, FTM, NYC RR, Chicago

H. C. Lindstrom, c/o NYC RR, Chicago

R. J. Murphy, Atty., NYC RR, Chicago

*L. J. Schirmer, AGFA, NKP RR, Cleveland

R. S. Tolan, C.A., NKP RR, Cleveland

H. B. Krengel, Atty., NP RR, St. Paul

T. W. Blake, Supr. Motor Service, PRR, 232-30th St. Sta., Philadelphia

K. G. Crowl, AGFA, PRR, 215 Penn. Station - 30th St., Philadelphia

H. G. Hamilton, Spl. Repr., PRR, 801 Penna Station, Pittsburgh

*W. C. Sommers, GFA, PRR, 801 Penna. Station, Pittsburgh

*A. E. Johnston, AFTM, PRR, Chicago

W. H. Wait, Comm. Agent, PRR, Chicago

W. A. Kenney, Supr. Explosives, PRR, 420-30th St. Sta., Philadelphia

L. W. Wickes, Asst. Gen. Solr., PRR, Broad St. Station, Philadelphia

A. O. Bjorklund, Gen. Atty., Soo RR, 1427 First Natl Bldg., Minneapolis

W. D. Drischel, Commnl. Agt., Sou Ry., 105 W. Adams St., Chicago

*L. C. Adcock, AFTM, Sou RR., P. O. Box 1808, Washington

C. T. Collett, GTM, SP Co., Chicago

R. J. Kinsella, AGFA, SSW Ry., St. Louis

A. P. Smith, A. to MTM, T&P Ry., Dallas

R. F. Williams, Asst. Supt. Transp., T&NO Ry., Houston

J. J. Burchell, Asst. Gen. Atty., UP RR, 1219 Dodge St., Omaha

G. T. Barry, Comm. Agt., Wabash RR, St. Louis

R. B. Elster, G. S., Wabash RR., St. Louis

Rene J. Gunning, Atty., WM Ry., 506 Standard Oil Bldg., Baltimore

H. M. Smith, Insp. of Transp., WM Ry., Cumberland

Harold N. McLaughlin, Atty., Brotherhood of Locomotive Engineers,
1708 Union Commerce Building, Cleveland 14, Ohio

Clyde Thompson, State Representative, Brotherhood of Railroad Trainmen,
176 W. Adams Street, Chicago, Ill.

Joseph H. Hays, Counsel)
A. M. Mathews, Attorney)
E. White, Attorney) A. W. R., 280 Union Station Bldg., Chicago
J. D. Feeney, Jr., Atty.)
F. E. Haas, Spl. Repr..)

*Representation only

SOUTHERN RAILWAY SYSTEM
105 West Adams Street
Chicago 3, Ill.

October 4, 1951 jt
6-1200

Mr. Joseph H. Hays, Counsel
The Association of Western Railways
280 Union Station Bldg., 517 W. Adams St.,
Chicago 6, Illinois

Dear Mr. Hays:

In regard to the conference held on September 27th in Room 474, you will recall Mr. A. N. Barton, General Traffic Manager of the Georgia-Pacific Plywood & Lumber Company was proposed and listed as a witness for the carriers in the Riss case, Docket MC 200.

We are happy to advise that Mr. Barton has agreed to appear as a carrier witness opposed to the application of the truckers, and due to the press of business, he will appreciate your preparing a statement for him, at the same time sending him copy of the docket so that he can study the situation and be prepared for any eventuality.

I am enclosing list of mills and warehouses owned and operated by Georgia-Pacific, which I believe will be of some assistance. These people ship primarily from the west to points east of the Rocky Mountains, with a large percentage going as far as the Atlantic seaboard area, both in the trunk line territory and in the Southeastern territory, and, of course, to the midwest and south. I am also sending copy of the attached to Mr. Masterson for whatever assistance it may be to him.

Very truly yours,

/s/ W. V. Drischel, Jr.

Commercial Agent

cc: Mr. Frank Masterson
Manager of Motor Carrier Bureau
Traffic Executive Association
Eastern Railroads
1 Park Avenue
New York, N. Y.

In order that you may more readily identify our business am listing our mills and warehouses.

LONGVIEW, WASH. -Operating under the name of
WAGNER LUMBER CO.

BELLINGHAM, WASH., operating under the name of
BELLINGHAM PLYWOOD CORP.

CLEVELAND, SO. CAR., operating under the name of
GEORGIA-PACIFIC PLYWOOD & LUMBER CO.

DUMAS, ARK., operating under the name of
GEORGIA-PACIFIC PLYWOOD & LUMBER CO.

FAIRFAX, SO. CAR., operating under the name of
GEORGIA-PACIFIC PLYWOOD & LUMBER CO.

HOQUIAM, WASH., operating under the name of
ACME DOOR CO.

JACKSON, MISS., operating under the name of
MOORE-REID & CO.

OLYMPIA, WASH., operating under the name of
WASHINGTON VENEER CO. (two plants)

SAVANNAH, GA., operating under the name of
GEORGIA-PACIFIC PLYWOOD & LUMBER CO.

SPRINGFIELD, ORE., operating under the name of
SPRINGFIELD PLYWOOD CORP.

STEELWOOD, ALA., operating under the name of
GEORGIA-PACIFIC PLYWOOD & LUMBER CO.

WALTERBORO, SO. CAR., operating under the name of
GEORGIA-PACIFIC PLYWOOD & LUMBER CO.

Warehouses at -- BOSTON, CHICAGO, PHILADELPHIA & PORT NEWARK, N.J., PITTSBURGH, PA--operating under the name of
GEORGIA-PACIFIC PLYWOOD & LUMBER CO.

When from Associated Mills throughout the South and on the Pacific Coast, the GEORGIA-PACIFIC PLYWOOD & LUMBER CO., or HILGARD DIVISION, will be shown as consignor or consignee.

GEORGIA-PACIFIC PLYWOOD & LUMBER CO.
Mr. A. N. Barton GTM
332 South Michigan, Ave.,
Chicago, Ill.

Plaintiff's Exhibit 44

October 3, 1951

Mr. Feldman:

Under date of September 26, a president of one of the eastern railroads writes me in part as follows:

> "I notice that a large number of truckers are trying to get permits to handle explosives on the highways and that the Automobile Association of America is opposing it. Also, I note that the Commission seems to be turning down the applications.
>
> "Here is what someone in the trucking business has told me: That if the opponents are successful and the truckers are not able to get permission to transport explosives on the highways, the Department of Defense will merely buy its own trucks and haul explosives themselves. Then we have the Government in the trucking business, and that neither the railroad industry nor the trucking industry wants. He says that this may be a case of where the railroads, in being successful in opposing these applications, might be biting off their nose to spite their face."

So far as material here, I have replied to him today as follows:

> "Thank you for yours of September 26 about the truckers' position in reference to railroad opposition and that of many other interests, including the American Automobile Association, to the applications to transport explosives on the highways for the Department of Defense.
>
> "What your trucking informant told you is just what I would expect a trucker to say who is worried about the prospective effectiveness of this opposition. My own view would be that the opponents should contest these applications with all the strength they can muster and let the future take care of itself. The Department of Defense is very sensitive to public opinion and if the current negotiations for better procedure on Section 22 rates work out and the opposition to the trucking applications is successful, I should not be surprised if the Department of Defense would hesitate to go into any very extensive trucking operations over the highways, even granting that there may be isolated places where they would feel they would have to truck in their own vehicles to some extent."

W. T. Faricy

Copy - Mr. Joseph H. Hays

 Plaintiff's Exhibit 45

LACKAWANNA

The Delaware, Lackawanna and Western Railroad Company
140 Cedar Street
New York 6, N. Y.

October 6, 1951

Mr. W. T. Faricy, President,
Association of American Railroads,
Transportation Building,
Washington 6, D. C.

Dear Bill:

Referring to yours of October 3rd in regard to fighting the transportation of explosives by highway:

I fully agree that the representative of the trucking industry was grasping at a straw in trying to convince me that the Department of Defense would go into the trucking business itself. That shouldn't stop the railroads from opposing the applications. I probably did not make clear my purpose in writing to you, and that was that railroad people should be alerted to the situation and watch out for any move on the part of the Department of Defense to haul its own ammunition.

Yours very truly,

/s/ Bill

 Plaintiff's Exhibit 45-A

October 3, 1951

Mr. William White, President
Delaware, Lackawanna and Western Railroad Company
140 Cedar Street
New York 6, N. Y.

Dear Bill:

Thank you for yours of September 26 about the truckers' position in reference to railroad opposition and that of many other interests, including the American Automobile Association, to the applications to transport explosives on the highways for the Department of Defense.

What your trucking informant told you is just what I would expect a trucker to say who is worried about the prospective effectiveness of this opposition. My own view would be that the opponents should contest these applications with all the strength they can muster and let the future take care of itself. The Department of Defense is very sensitive to public opinion and if the current negotiations for better procedure on Section 22 rates work out and the opposition to the trucking applications is successful, I should not be surprised if the Department of Defense would hesitate to go into any very extensive trucking operations over the highways, even granting that there may be isolated places where they would feel they would have to truck in their own vehicles to some extent.

Much obliged for tipping us off to the feeling of your informant, which, without disclosing your identity, I shall pass along to some of those in touch with the defense of the case.

Sincerely,

/s/ W. T. Faricy

LACKAWANNA
The Delaware, Lackawanna and Western Railroad Company
140 Cedar Street
New York 6, N. Y.

On Line-
September 26, 1951.

Mr. W. T. Faricy, President
Association of American Railroads,
Transportation Building,
Washington 6, D. C.

Dear Bill:

I notice that a large number of truckers are trying to get permits to handle explosives on the highways and that the Automobile Association of America is opposing it. Also, I note that the Commission seems to be turning down the applications.

Here is what someone in the trucking business has told me: That if the opponents are successful and the truckers are not able to get permission to transport explosives on the highways, the Department of Defense will merely buy its own trucks and haul explosives themselves. Then we have the Government in the trucking business, and that neither the railroad industry nor the trucking industry wants. He says that this may be a case of where the railroads, in being successful in opposing these applications, might be biting off their nose to spite their face.

Frankly, I do not know what the answer is, but it is something that Walter Kelly might want to discuss with some of the traffic people.

Yours very truly,

/s/ W. White

 Plaintiff's Exhibit 46

October 9, 1951

Mr. Feldman:

On October 3 I sent you extracts from some correspondence I had with the president of one of the eastern railroads regarding the truck applications currently being made to carry explosives on the highways. In response to what I wrote that president on October 3, as quoted to you, he replies, under date of the 6th, in part as follows:

> "I fully agree that the representative of the trucking industry was grasping at a straw in trying to convince me that the Department of Defense would go into the trucking business itself. That shouldn't stop the railroads from opposing the applications. I probably did not make clear my purpose in writing to you, and that was that railroad people should be alerted to the situation and watch out for any move on the part of the Department of Defense to haul its own ammunition.

W. T. Faricy

Copy - Mr. Joseph H. Hays

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ATLANTIC COAST LINE RAILROAD COMPANY
Freight Traffic Department
Wilmington, N. C.

October 10, 1951
61175-X

Mr. F. X. Masterson, Manager,
Motor Carrier Bureau,
Traffic Executive Asso. -Eastern Railroads,
One Park Avenue,
New York 16, N. Y.

Dear Mr. Masterson:

We have your letter of October 5 concerning motor carrier applications for operating rights in the transportation of ammunition and explosives.

Coast Line was not represented at the meeting held in Chicago on September 27 and so far as I know was not invited to attend. We are glad to have copies of the minutes of the meeting which were enclosed with your letter.

Your letter says that all of the roads addressed in it had witnesses who testified in the government reparation cases. Coast Line, however, had no witness in Docket 29822, the ammunition and explosives case. The late Mr. G. E. Rollins, General Superintendent, Atlanta, Ga., represented Coast Line on a committee of transportation officers who developed information for use in the defense in that case. Our file shows that on December 8, 1947, Mr. Rollins sent to Mr. E. B. deVilliers, Assistant Vice-President, GM&O Railroad, Mobile, Ala., two sets of statements containing information concerning movement and handling of ammunition and explosives by Coast Line during World War II. The information furnished by Mr. Rollins was presumably used in the preparation of Mr. deVilliers' testimony. In addition, our file shows that on August 3, 1948, Mr. Rollins furnished duplicates of this data to Mr. Charles T. Abeles, Senior General Solicitor, SAL Railroad, Norfolk, Va., in response to his letter dated July 28, addressed to Mr. R. E. Browne, III, Attorney, ACL Railroad, Wilmington, N. C.

Although the issues in the pending applications appear to have been narrowed to a point where Coast Line's direct interest is relatively small, we are on principle strongly opposed to the granting of the applications and we would wish to furnish any assistance in our power to the committee in charge of the case. However, during the short interval between now and the October 29 hearing, we doubt whether it would be practicable for us to furnish an operating witness whose testimony would be very helpful. We are particularly of this opinion because Mr. Rollins, who served on the committee of operating officers for the defense in Docket 29822, is no longer living and there would be little time left for someone else to pick up where he left off and prepare helpful testimony.

We realize that if applicants should be successful in obtaining the operating rights which they are seeking, even though limited to the extent now advocated by the armed services, it would probably not be long before additional operating rights would be granted which would spread truck service all over the south. In the circumstances, representative of Coast Line's Traffic Department will attend the October 29 hearing, although we are disposed to believe that it will not be necessary for him to testify.

Yours very truly,

/s/ R. G. Hodgkin

Freight Traffic Manager.

Copies:
Mr. F. H. Pitman, GFTM, N&W Ry, Roanoke, Va.
Mr. J. E. Belcher, CA, C&O Ry, Richmond, Va.
Mr. E. N. Hambly, GFA, Erie RR, 50 Church St., New York 7, N. Y.
Mr. W. W. Wolford, AFTM, SAL RR, Norfolk 10, Va.
Mr. L. W. Wickes, Jr., Asst. Gen. Solicitor, PRR, Philadelphia 4, Pa.
Mr. R. W. Cronon, Asst. Gen. Solicitor, GN Ry, St. Paul 1, Minn.
Mr. J. H. Hays, Counsel, Asso. of Western Rys, 204 S. Canal St., Chicago 6, Ill.

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THE ASSOCIATION OF WESTERN RAILWAYS

LAW DEPARTMENT
220 UNION STATION BUILDING
917 WEST ADAMS STREET — CHICAGO 6, ILLINOIS

JOSEPH H. HAYS,
COUNSEL
AMOS M. MATHEWS,
JAMES W. NISBET,
ED WHITE,
ATTORNEYS
CHESTER K. SMITH,
RESEARCH ENGINEER
FRANK E. HAAS
SPECIAL REPRESENTATIVE

October 11, 1951

TO OFFICERS OF CERTAIN STATE ORGANIZATIONS:

This letter is to outline in some detail the duties we hope that you will be able to perform in connection with the proposals by various trucking companies to engage in the business of trucking dangerous explosives.

You will recall that the hearings originally commenced in Chicago on September 17th, recessed on September 21st, and will reconvene on October 29th in Chicago in Suite 1100 at 22 West Madison St., Chicago. This is the meeting room of the Central Territory Railroads-Freight Traffic Committee. It is expected that the first applicant, Rice & Company, will require two or three days to complete its affirmative case and that protesting testimony on behalf of the railroads should be ready to be submitted within one week thereafter. Except for the definite time for hearing the remainder of this schedule is purely a matter of conjecture and is subject to great revision, depending upon developments of many different events. It is suggested that in contacting witnesses and making tentative plans for appearance in Chicago the period for such appearance be fixed at somewhere between November 10 and November 30. As matters develop we will endeavor to give you more exact information on this subject and will, of course, provide you with a fairly accurate guess as to when you should plan for the appearance of witnesses who are specifically committed to appear.

There is attached hereto a list showing the commodity and territorial descriptions of the applicant companies. This list, in addition to identifying the applicants, gives some idea of the territory sought to be served by each.

1. SURVEY OF STATE LAWS, CITY ORDINANCES, AND REGULATIONS LAID DOWN BY ORDERS OF STATE COMMISSIONS PERTAINING ESPECIALLY TO THE TRANSPORTATION OF DANGEROUS EXPLOSIVES. The material we want in this connection is a typewritten copy of any state law dealing especially with trucks transporting explosives. Some laws require trucks to stop at grade crossings, others limit the quantity of any dangerous explosives that may be kept within the limits of cities and towns, etc. When you find a statute, we would like first a plain typewritten copy. Do not bother at this time to provide a certified copy as we will not

provide for certification until and unless we decide to use the material in evidence. We should also be provided with any rules of the Public Service Commission which bear directly upon this subject. Do not make any attempt to check the city ordinances of all cities and towns but make some investigation, possibly through the State League of Municipalities, to find out whether or not any pattern of city ordinances is prevalent in your state. Some ordinances of perhaps long standing deal with magazines and the storage of dangerous explosives and require that they be stored outside the limits of cities and towns, etc. If you find ordinances of this character, let us have a copy if it is not too long, otherwise let us have the gist of it.

2. PARENT-TEACHERS ASSOCIATIONS. Interest in this matter and action to a degree by parent-teachers associations or other school organizations might be important. A group of such organizations around Chicago has been adopting resolutions condemning the unrestricted transportation of explosives over public thoroughfares and urging that if such transportation is to take place that vehicles transporting such explosives be excluded from all roads and streets travelled by school buses and be excluded from all public thoroughfares adjacent to school buildings especially during school hours. Contacts should be made with parent-teachers organizations preferably at the state level and through such groups as have the means to officially act promptly before October 29th. If they are willing to do so, they should adopt resolutions and forward the same to the national organization. We are deliberately refraining setting forth the text of a resolution to avoid the adoption of too many of them with the same language. However, as soon as any one state PTA group or similar group does adopt a resolution, we hope that a communication enclosing a copy of the resolution will be sent by it to every other state organization in the country. The object in this connection is to provide enough authority and impetus to generate action by the national organization and testimony in such hearings by an officer of the national organization.

3. ACCIDENT REPORTS. The brotherhood organizations are preparing a showing to prove the special hazards resulting from the possibility of trains striking explosive trucks at grade crossings. We are getting some information direct from the records of the Commission bearing on this subject and will endeavor to supplement it by inquiry direct to member roads. We do not ask your assistance on this particular phase of the subject at this time.

Further in regard to accidents, investigations should be made by you of the records kept by the various states to determine whether or not truck accidents are reported and kept statistically so that they may be distinguished from accidents by automobiles. If you find that truck accidents are shown separately, please advise at once and if possible give us some idea as to what kind of a job it would be to pull off the records as to the extent of truck accidents, not only those involving trains but also those involving other vehicles, and advise

how extensive a job it would be to show the classification of such accidents as to trucks with other trucks, trucks with automobiles, trucks with fixed objects, etc.

The third category of information in this field is that which pertains to any accidents in your state involving the trucking of explosives, poison gas, or dangerous chemicals. Search your own recollection and endeavor to give us as much information as you can as to any such accidents. We want this data whether or not a train was involved and whether or not there were any serious injuries or deaths. In this connection, we do not desire at this time to obtain such data as to accidents involving gasoline transports. While this commodity is dangerous, it is not included within the dangerous explosives involved in these proceedings.

4. LEAGUE OF MUNICIPALITIES. Contact should be made with the League of Municipalities in each of the states for several purposes; first, to advise the officers of such organizations as to what is going on; second, to determine what city ordinances bearing on this subject are common within the state; and third, to obtain their active cooperation. In this connection it would be highly desirable that the League of Municipalities intervene as a party to the action. If they are not equipped with counsel and other facilities for that purpose, check with them to see whether or not an officer of the league would be willing to testify as our witness. In that connection we would assist in preparing a statement to be submitted by the witness but would want full facts as a background for same. In addition to individual state participation the state league should express its views to whatever national organization it may be affiliated with looking toward participation in the proceedings by the national group. Your attention is called to the fact that there is an American League of Municipalities and also a Conference of American Mayors and maybe other organizations somewhat national in scope. We would, of course, welcome the support of any or all of them. Municipal leagues certainly should be interested in detouring such traffic around such municipalities and in excluding such traffic entirely from certain areas where there is no other means of movement. They certainly should insist upon retaining the power to specify the time of day or night this movement could take place, and if police escorts are necessary they should retain the power to enact ordinances for the purpose of exacting permit fees adequate to defray the cost of providing such escorts.

5. SAFETY COUNCILS. Nearly every state has a state safety council, dealing with factory safety, etc. as well as traffic safety, although traffic safety is usually the most important element. The North Dakota State Safety Council and the Oklahoma State Safety Council have already entered protests in these proceedings. Contact should be made with the state safety council in each state in the hope of obtaining a witness and special presentation not only of hazards generally but of hazards peculiar to the state in question. In some states mountainous roads constitute a special hazard, in others bridges at strategic

points or other structures are hazards peculiar to that particular state. If an individual state safety council is not equipped to testify, it is possible that some one state safety council might be willing to enter its appearance and the appearance of other state safety councils as might authorize it to speak for them.

6. POLICE ORGANIZATIONS. For contacts with police organizations and/or peace officers associations, we will endeavor to get a meeting of chief special officers of member roads to organize their assistance in obtaining these contacts.

7. ARRESTS AND LAW VIOLATIONS. One of the questions to be determined by the Commission in these proceedings is the fitness of the applicant to properly perform the service. The record of the applicant as a law abiding truck operator is pertinent on the question of fitness. You should determine from the attached list of applicant companies whether or not records are kept in your state from which it might be possible to determine whether or not any of the applicants are habitual law violators. If you find such records are available, please advise us promptly so we may then deal with the question of preparation and submission of the data as evidence.

* * * * *

In all of the aforesaid you should call upon representatives of brotherhood organizations who have been previously designated as persons to cooperate with you regarding matters of this character. This is particularly so as to the operating brotherhoods. Mr. Harold McLaughlin, attorney for the Brotherhood of Locomotive Engineers, will undertake to obtain a letter from the national chiefs of the respective operating brotherhoods directed to those men requesting them to collaborate with you in making these contacts and obtaining this data wherever feasible. Do not unduly delay making these contacts pending the availability of that help but where it is feasible to work together it is highly desirable to do so. The Engineers, the Trainmen and the Conductors have all formally intervened in these proceedings.

The time for preparation is extremely short. These cases are of great importance and our opportunity to make progress in these matters is very real. Please do not hesitate to wire or telephone any inquiries you may have as to any of the above.

Very truly yours,

Joseph B. Kaye

Counsel

Enc.

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MEMORANDUM OF AGREEMENT

BETWEEN EASTERN RAILROADS --- TRANSPORTATION COMMITTEE AND CARL BYOIR AND ASSOCIATES, INC.

* * *

AGREEMENT, made this fifteenth day of August, 1949, by and between EASTERN RAILROADS -- TRANSPORTATION COMMITTEE, hereinafter called party of the first part, and CARL BYOIR AND ASSOCIATES, INC., hereinafter called party of the second part, WITNESSETH:

1. The party of the first part employs the party of the second part as its public relations counsel for a period of one year from the date of the signing of this agreement.

2. The purpose of the party of the first part in retaining the services of the party of the second part is to have the advantage of the advice and counsel of the party of the second part on matters pertaining to public relations. The party of the second part also agrees to manage and supervise any campaign of public relations agreed upon by the parties hereto.

3. During the period above mentioned the party of the second part agrees to consult and advise with officials of the party of the first part, whenever called upon to do so, in matters directly or indirectly affecting public relations of the party of the first part.

4. The party of the first part agrees to pay to the party of the second part for said services the sum of $75,000 per annum, payable in equal monthly installments of $6,250 per month in advance.

The first of such payments shall be due and payable on the date of the execution of this agreement and the subsequent monthly payments shall be due and payable on the same date of each succeeding month during the entire term hereof.

5. In addition to the payment of the fee for services, the party of the first part will pay to the party of the second part an amount equal to all the expenses of the latter of every sort in connection with the servicing of the account, including the salaries of all persons devoting their full time to the business of the party of the first part such as the account executive, writers, stenographers, photographers, etc., and proportionate amount of the salaries of the department heads and specialists who devote part of their time to the account. All persons employed on a part-time basis will keep an accurate record of the time devoted to the business of the party of the first part and the time will be billed accordingly. The party of the first part will also pay all expenses for photography, printing, mat services, travelling, entertainment, mimeographing, stationery used for releases, telephone, telegraph, postage, art work, etc.

In order to finance the out-of-pocket expenditures detailed above, the party of the first part agrees to advance to the party of the second part, upon request of the party of the second part, a sum of money equal to the expenses for each month as estimated by the party of the second part at the beginning of the month.

The party of the second part will render monthly itemized statements to cover said expenditures and advances and the party of the first part will pay the amounts set forth in these statements each month. In the event the aggregate amount of the expenditures shown on the monthly itemized statement rendered by the party of the second part is in excess of the advance by the party of the first part, the party of the first part will pay the difference to the party of the second part. In the event the aggregate amount of the expenditures shown on the statement is less than the advance, the party of the second part will return the difference to the party of the first part.

It is understood that the party of the first part is entitled to the consultation and advice of Carl Byoir, Gerry Swinehart and George Hammond and that no charge other than the monthly fee shall be made for their services.

6. The party of the second part will supervise all appropriations and expenditures for its work in publicity and public relations after previously obtaining the consent and approval of the party of the first part.

7. The party of the second part agrees to consult with and be wholly guided by the party of the first part on all questions of policy to the end that no material shall be released to the public, or to anyone, giving any impression contrary to the established policies of the party of the first part.

IN WITNESS WHEREOF, we, the undersigned; have executed this agreement in duplicate the day and year first above written.

EASTERN RAILROADS -- TRANSPORTATION COMMITTEE

By /s/ J. M. Fitzgerald
Vice Chairman

CARL BYOIR AND ASSOCIATES, INC.

By /s/ Gerry Swinehart
President

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work report

1. Alerted local dailies and wire services that ~~Ohio~~ Public Utilities Commission had set hearing dates for 6 of 15 trucking companies cited previously for numerous violations. Phoned stories in, myself, to two wire services who failed to staff commission that day because of manpower shortage and opening of state legislature's session.
2. Conferred with Hal Cohen and helped frame opening statement for Highway Director Kauer for use on Columbus Town meeting Jan. 7 discussion of subject: "Are Trucks Taking Over Our Highways?"
3. Also arranged with Cohen to "plant" some questions to ask of Town Meeting speakers during question-and-answer period on the radio-tv-cast forum.
4. Also arranged to obtained (sic) recording and transcript of Town Meeting discussion.
5. Succeeded -- after long period of groundwork and gum-shoeing -- in getting State Highway Patrol to stage truck weighing demonstration on Rt. 40 (National Highway). Patrol started check Monday and played "waiting game" with overloaded truckers throughout most of week, producing a news story of national interest which made P1 with art in local dailies.
6. Persuaded Columbus Dispatch to get to work on round-up of entie truck situation in view of Rt. 40 trap developments and the opening of State Legislature. (Dispatch has one of its top reporters now working up story.)
7. Suggested to Dayle Frazier, news editor of The Dispatch and local stringer for Time-Life, that Life might be interested in truck fiasco here. He thankful for suggestion and said he would offer. Alerted New York office to help offering along.

~~8. Forwarded copy of Highway Transportation Institut's first legislative Bulletin to New York office for its information. This is newly organized pro-truck outfit which is building rapidly.)~~

9 8. Tipped Chet Long, leading local radio and tv commentator, on picture possibilities in truck weighing stunt. He assigned cameraman, but it was dark, rainy day and pixtures unsuitable for TV. Long used story however, for three days running on morning and afternoon radiocasts and evening telecast.

10 9. Touted all wire service reporters onto story answering question: What happens to Ohio's grandiose highway building plans if federal government increases gasoline taxes thereby eliminating state plans for gas tax increases? (Work-up of this sort certain to preach a lot of our poison.)

OTHER ACTIVITIES

1. Placed RCA farm story with local farm radio commentator for Bob Davis.

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March 2, 1951

To: Reyn Girdler
From: Don Stull

WORK REPORT FOR WEEK ENDING MAR. 2

SPECIAL ACTIVITIES

OHIO

1. Persuaded Ohio State Journal to do series on winter road damage and help Reporter Kenneth Meckstroth work up same. (Stull).

2. Steered wire service reporters onto hearing before PUCO on Riss & Co., one 15 truckers cited for repeated violations. Made sure stories pegged on fact Riss had 69 violations over six-month period, worst record among 15 companies. (Stull).

3. Forwarded excerpt of Gov. Lausche budget message to NY. Lausche again called for enactment of ton-mile tax. (Stull).

OTHER ACCOUNTS

1. Covered introduction of 1951 refrigerators models for SERVEL in Toledo, O.

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Page One

work report for week ending April 6

COPY PRODUCED

1. Prepared release for State Highway Director refuting trucker claims ton-mile tax would send freight costs spiralling and force many out of business; also interpreted ICC chart study. (Stull).

COPY RELEASED

1. Item #1 above.

SPECIAL ACTIVITIES

1. Attended committee hearing on ton-mile tax bill and reported details to RG (Stull).

2. Presented ICC study to State Highway Director Kauer and his Publicist Hal Cohen. They bought. (Stull).

3. With Jim Marine, conferred with Hal Cohen and Frank Murray, chief statistician and researcher of Ohio Highway Department, explaining derivation of ICC chart figures. Murray "very, very satisfied." (Stull).

4. Turned over to Hal Cohen some 30 copies of pamphlet describing Ohio Highway financial muddle. Cohen wanted for Farm Bureau legislative agent. (Stull).

5. Journeyed to Washington with Hal Cohen and Jim Marine for check of figures in ICC study -- so Highway Department could claim authorship of study. (Stull).

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ASSOCIATION OF WESTERN RAILWAYS
PUBLIC RELATIONS OFFICE
* * *

* * * * * * * * * * *

October 16, 1951

TO PUBLIC RELATIONS OFFICERS:

The attached article captioned "Munitions and Motor Cars Won't Mix" relates to the current efforts of highway freighters to get into big-scale munitions trucking.

The material - which covers the subject quite fully - was prepared especially for employee magazines, and may be used in full, in part, or as a basis for individual stories.

We shall be glad to loan you pictures suitable for illustrating this story, showing damage resulting from transportation of explosives over the public highways.

Yours very truly

(Signed) H. M. SIMS

HMS/pe

ASSOCIATION OF WESTERN RAILWAYS
PUBLIC RELATIONS OFFICE
* * *

MUNITIONS AND MOTOR CARS WON'T MIX

Truck operators want to risk your life to make new profits hauling munitions on the public highways. They are asking permission of the Federal Government to bring new and greater danger to busy and over-crowded highways where 20,000 Americans die every year in accidents.

Half the tragic record of nearly 1,000,000 dead in the last half-century has been written since 1936 as motorized boxcars have all but usurped the nation's roads.

In keeping with their policy of seeking only the most profitable traffic, the big truckers have asked the Interstate Commerce Commission to ignore the munitions-hauling safety record of the railroads and give the highway freighters permission to haul explosives on the public highways which already are jammed with an average of 15 vehicles on every mile of road.

The applications of more than 60 trucking firms to the ICC for munitions-hauling authority have been opposed by the railroads, which have been joined in the fight for safety by the American Automobile Association, the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Trainmen and the Order of Railway Conductors.

Intervention by the AAA and the unions was attacked by counsel for Riss & Co., Kansas City, Mo., spearhead of the truckers' fight, but the ICC was told the record revealed many instances of truck crashes into trains that injured or killed engine and train crews and that munitions-laden highway freighters would multiply that danger.

By requesting the ICC to authorize truck movement of munitions, the truckers are asking the Government to halt at the gate all the safety

precautions imposed by the Army and Navy at arsenals, powder factories or munitions depots. What kind of safety control can there be over a truckload of explosives hurtling down the highway at 50, 60 or 70 miles an hour? The truck, once it departs from a government arsenal, is on its own until it gets to its destination.

Highway traffic itself would be one of the major hazards faced by a munitions load. Other vehicles would be just as big a threat to explosive cargoes as the carelessnes of munitions truck drivers themselves.

A crash into a highway boxcar loaded with grain, foodstuffs or merchandise might possibly result in broken bones. A crash into a munitions truck would almost certainly end in explosion, fire and sudden death!

But even the observance of every driving rule of safety and speed would be no guarantee of the safe arrival of munitions at their destination. Communist sympathizers and saboteurs could be expected to see their opportunity to get driving jobs and then seize a load or several loads of munitions and use them to damage America's war industry.

Careful screening of applicant drivers might reduce this peril but it would be small defense against hi-jacking once a truck hit the highway.

Munitions depots usually are located and policed in such a manner as to minimize the danger to the public. Why, then, put these munitions on the highways as another threat to passenger cars and other vehicles as well as those who reside or have places of business by the roadside?

The safety in which munitions are carried by the railroads is proven by the record. In 1944 the railroads hauled 15,000,000 tons of explosives and during all the years of World War II there were only three railroad accidents involving such loads, none of which took a life.

But the safety pictures would change completely if fast-rolling motor giants ever began hauling munitions up and down the nation's roads. The AAA calls the proposed munitions traffic a "great hazard" to highway users and Charles M. Hayes, president of the Chicago Motor Club, has

warned the ICC that a 72,000-pound (36-ton) truckload of munitions could blow up a large city.

As long ago as 1935, the National Fire Protection Association sounded warning that life and property on the highways were being seriously threatened by the growning movement of "highly flammable liquids and other dangerous materials" and that such traffic imperilled homes, hospitals, theaters, business establishments, schools and churches.

Certainly, there has since been no change for the better. Today's traffic is far heavier and moves much faster than it did fifteen years ago. As highway speeds have risen, the number of cars on the road has multiplied to a total of more than 40,000,000 in 1950. In 1935 there were 22,500,000 cars on America's highways. And in the same span of years there has been a rapid growth in the number of roadside business places with their numerous employees, until every road is crowded today by stores, service stations and homes, all of which would be in danger with the passage of every munitions truck.

Just to illustrate, a recent check along the 40 miles of U. S. Highway No. 1 between Baltimore and Washington revealed 618 roadside stores and 665 other structures, all of which are exposed to the danger of being blown sky-high if a munitions truck had an accident while passing.

Anyone who has ever driven on the highway has had this terrifying experience. A fast-moving highway boxcar comes up from the rear, blasts its air-horn and rushes past. The smaller passenger car often is forced to swerve out of the way onto the shoulder of the road and the driver left shaken by the thought of what could have happened to him and those with him.

How much more terrifying if that behemoth carried signs proclaiming: DANGER--MUNITIONS! Perhaps 50 or 60 tons of it!

Munitions trucks probably would travel just as fast as other road busters. No secret is made of the 50, 60 and 70-miles-an-hour speeds at which intercity freighters race from town to town.

Drivers of munitions trucks could not be expected to go any slower than other traffic; they would be a road hazard if they did since faster-moving vehicles would take risks to pass.

The contemplated movement of munitions in large volume by truck would be completely without the experience in handling and policing that is assured the transportation of munitions when moved by railroad. The railroads' own Bureau of Explosives supervises such shipments and operates much as if it were an arm of the Government itself. There are no similar safeguards for the transportation of munitions over the highways.

And from the record, it appears that the trucking industry cannot or will not police itself for safety when quick dollars are in sight.

The Hudson River Holland Tunnel explosion and fire in May, 1949, proved that. The Holland Tunnel blast erased the cargo of a chemical truck loaded with 48 times the legal volume. But a few weeks later, when tunnel traffic had been resumed, a spot check found a hundred violations of trucking laws, in spite of the earlier accident.

Each day brings its own tale of disaster involving a linehaul highway giant, particularly oil tankers. One of the worst of these accidents was the crash of a tanker and Chicago streetcar that burned alive 34 passengers and did property damage estimated at $150,000. The resulting fire engulfed several automobiles and eight nearby buildings, destroying five of the buildings.

Omaha, Neb., last spring was the scene of two tanker crashes in a week. In one the driver died when his truck struck a building and burned; in the other, tragedy was averted when a tanker that struck a streetcar full of school children did not explode or burn.

Sometimes disaster is missed by a scant margin, as in Los Angeles when a driver hired to haul dynamite and detonating caps from Oakland, Cal., to Phoenix, Ariz., got a toothache in Los Angeles. So, he just parked his rig and went to find a dentist. Fortunately, police saw the truck, investigated and then went looking for the driver who was hurried on his way.

Investigation shows faulty brakes to be a major factor in truck accidents, ranking right along with vehicle overloading in defiance of weight laws. The Illinois State Division of Motor Carriers has reported that more than half the 360,000 highway motor carriers examined every six months have some defect, usually in the brakes.

Loss of brake power on a munitions truck headed downhill would almost certainly mean disaster. And suppose that the truck was about to pass a school or passenger bus?

School and passenger buses today are an important part of road traffic and putting hundreds of fast, huge munitions trucks on the same highways with those buses is not to be tolerated.

There is no reason, except the profit motive, for truckers to seek to haul munitions on the highways. The railroads can continue efficiently to meet every demand of the Government for movement of explosives. And it can be done by the railroads without endangering life and property.

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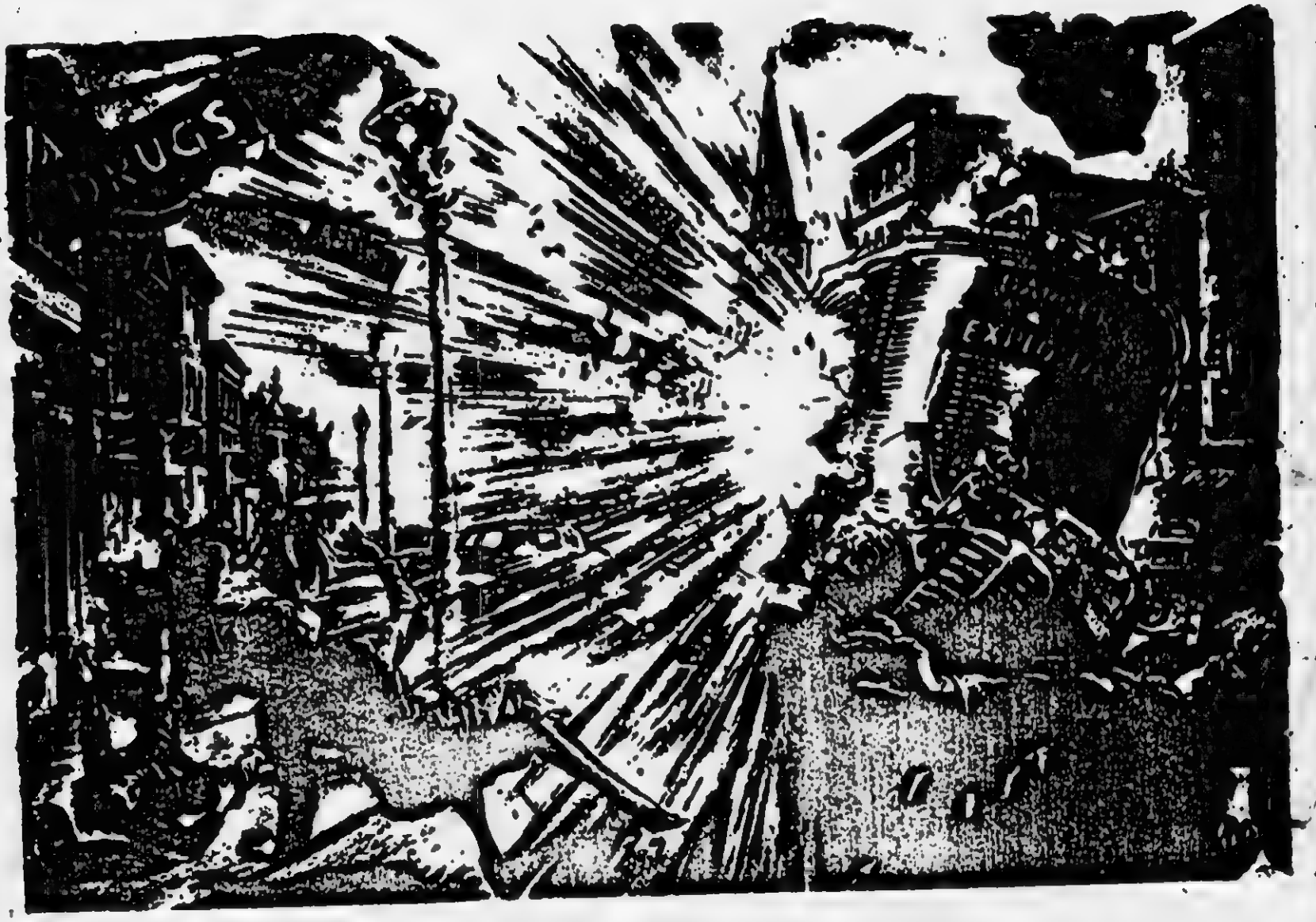
Plaintiff's Exhibit 55



IT CAN HAPPEN IN YOUR TOWN

TRUCK OPERATORS want to risk your life to make new profits by hauling dangerous explosives on the public highways. They are asking permission to subject towns and cities everywhere in this country to the dangers of explosions any single one of which could cause almost immeasurable damage, deaths and injuries. Presently, about 50 motor carriers are asking the Interstate Commerce Commission for permission to carry dangerous explosives over routes for which they already hold operating rights and over extensions of routes from which they hope to gain new traffic.

Mostly, of course, they are interested in obtaining military munitions traffic and are claiming that there is great need for their service. The evidence which will be presented on behalf of the railroads in opposing the petitions of the truckers will leave no doubt in the minds of Commission members that the truckers claim has little or no basis in fact. In only a very few instances have military installations been so located that truck service may occasionally be necessary—representatives of the armed services will make clear what these points are.

It is true that the Department of the Army has already indicated that many of the truck line requests are for the extension of service in places where there is no need for truck service. It has done so by informing the Commission that its interest in the pending proceedings is limited to a few specified areas while the truckers are asking for almost a free hand in accepting and routing shipments anywhere and everywhere.

The stated policy of the Departments of the Army and the Air Force is this:

"Normally, applications (by motor carriers) are supported only when a definite need is apparent and service by carriers with existing authority does not meet military traffic needs. Applications for operating rights will not be supported when the effect is simply to provide additional service or a larger number of carriers. This applies equally to requests for temporary or permanent operating authority."

The foregoing is Paragraph 3 of a release dated July 7, 1949, entitled WITNESSES APPEARING IN SUPPORT OF MOTOR CARRIER OPERATING AUTHORITIES. Its issuance was made necessary by violations of stated Army-Air Force policy by some of its personnel as is made clear by the wording of Paragraph 5:

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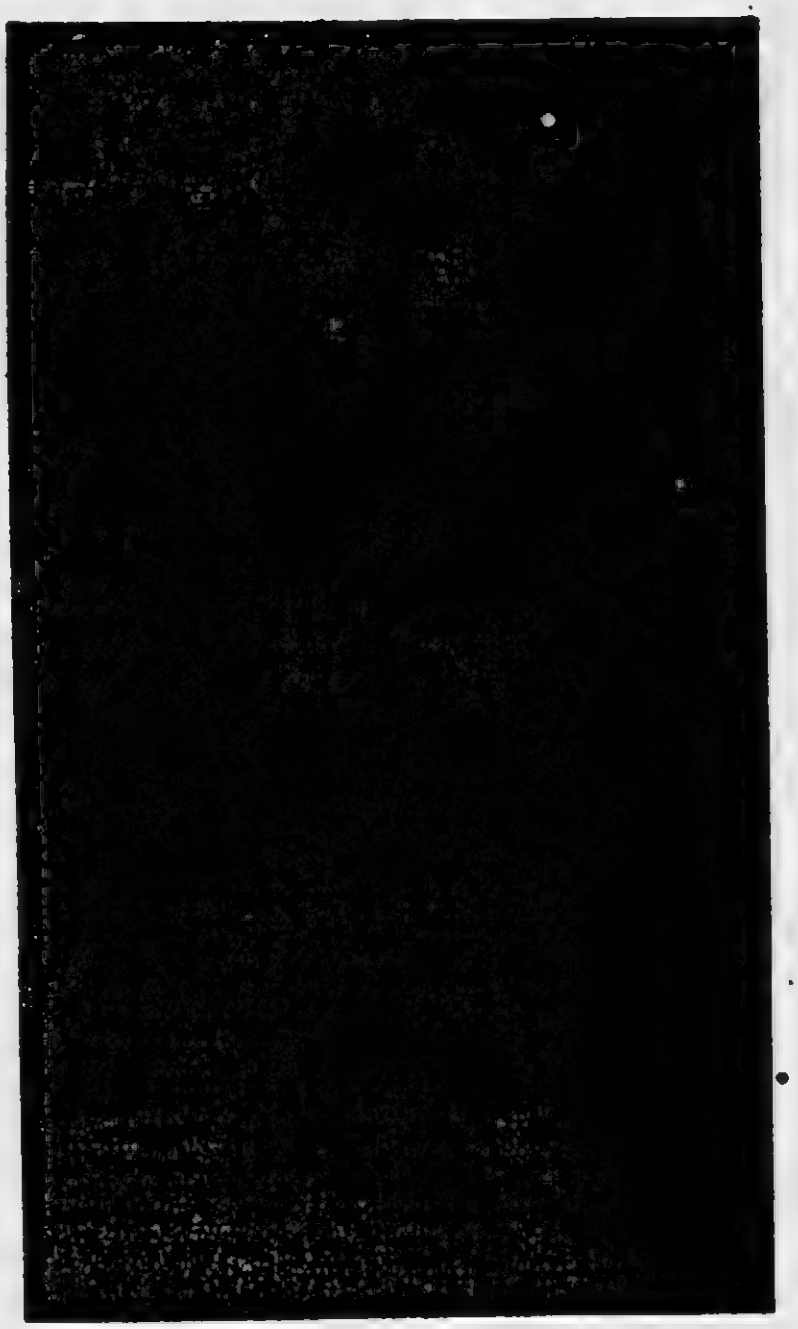

portation or the Judge Advocate General, Department of the Army, or the Chief, Transportation Division, Headquarters, United States Air Force."

The Department of the Navy follows similar procedures.

Those in charge of the military, naval and air installations in this country know the dangers of handling explosives and go to any lengths to insure the safety of uniformed or civilian personnel in handling munitions. The regulation cited is not directed specifically to truck movements of munitions and explosives but it is obvious that, in such instances, only compelling need is likely to cause military, air or naval authorities to intervene in behalf of truck carriers desiring to move munitions.

The arguments being advanced by the truckers that they should be given the freedom of the highways in carrying cargoes of dangerous explosives in the interest of supporting the national defense efforts are as dishonestly misleading as the arguments they present when they claim that they pay their full share of highway costs or when they proclaim piously that highway destruction could not possibly be caused by their oversize, overweight, overloaded vehicles.

Just how great is the danger to America's towns and cities from the possibility that the truckers may obtain permits to operate their already dangerous highway freighters made more dangerous with cargoes of high explosives and munitions? Some idea may be gained from the volume of such traffic carried by Class I railroads in 1950. They hauled 1,462,046 tons of ammunition and explosives—the approximate equivalent of 100,000 truckloads.

Let's see just how much damage one such truckload of explosives actually caused on March 7, 1942, near Smithfield, N .C. There have been other, and later, instances of truck explosions. *Tirs* has chosen this one because it is possible to quote directly from records of the Interstate Commerce Commission as reported in the case of *Hughes Transportation, Inc., Extension of Operations—Southeastern States*, decided December 18, 1946. The finding of the Commission was: *Applicant found not fit, willing, and able properly to perform the service proposed, or to conform to the requirements of the Interstate Commerce Act and of our rules and regulations thereunder. Application denied.*

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"In that accident, one of applicant's vehicles loaded with high explosives was struck by an automobile which failed to stop at an intersecting highway, although a stop sign was posted. The driver of the car was killed as a result of the collision. A fire resulted which firemen were unable to extinguish, and approximately 2 hours later the vehicle's contents exploded killing 6 persons, inc' ling the 2 occupants of a passenger car which passed through a road block, and 4 guests of a nearby hotel. In addition, 40 persons were injured, and property damage in the amount of $525,274 resulted."

In the same case the Commission reported another accident in these words:

"The next accident investigated occurred on March 21, 1943, near Forest City, N. C., in which one of applicant's

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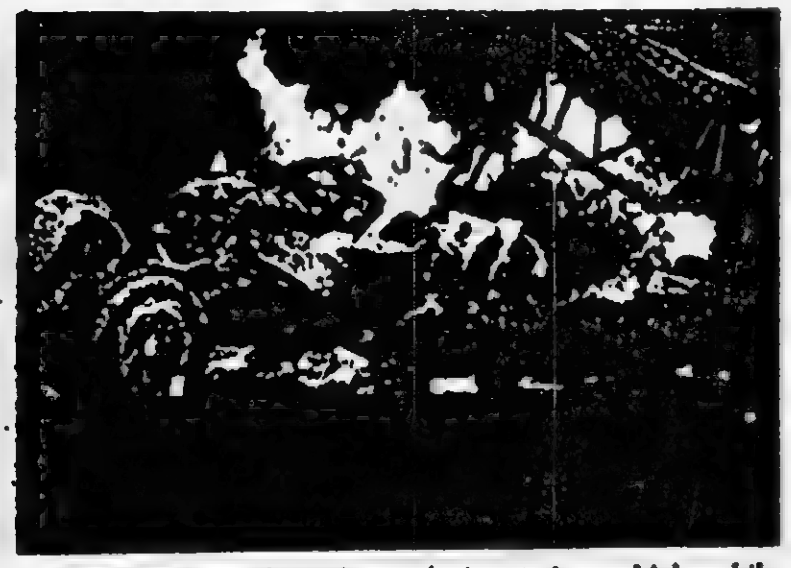


drivers lost control of the explosives-laden vehicle while rounding a curve and crashed into a bridge. The head driver was killed and a fire resulted setting off the explosives, but because of prompt action on the part of the relief driver in warning persons in the area, no casualties resulted from the explosion. The truck and cargo were completely demolished and considerable damage was done to the bridge and road."

And there was another reported which happened near Dalton, Ga., on April 4, 1946, when projectiles loaded in one of the truck company's vehicles exploded and completely demolished a home and other buildings near the scene. Property damage was $26,250. There were no casualties because, fortunately, there had been time to warn the occupants of the buildings.

The Commission commented on other violations involving trucks carrying explosives but the three mentioned above received greatest attention.

It would not be fair to say that all of the applicant truck companies now asking permission to enlarge their business by hauling dangerous explosives over our highways and through our towns have records like the one cited here. But it is fair to point out that every trucking company is subject to having the same kind of accidents happen. The first mentioned was not a fault of the carrier, another car ran into the truck. In the second case a driver lost control of his vehicle. In the third instance an overheated tire caught fire.

The Hughes company is among the present applicants as are a number of other companies asking operating rights in the South.

Even the most rigid adherence to rules of safety, proper vehicle maintenance and adequate driver training will not insure against the risk of such accidents happening. When they happen to an explosives-laden truck those near the scene had better hope they have time to clear out.

Consider, too, a great danger not directly involved in these three cases. Recently, the American Automobile Association has published a study of "The Jackknifing Menace" which highlights the dangers of just this one kind of truck mishap when the power unit goes one way, the trailer unit another, and woe be to the driver or pedestrian who may end up involved in the accident. Here are two paragraphs illustrating the serious concern with which this body representing the average motorist views present driving dangers:

"From the viewpoint of the motorist, at any rate, the continued threat of heavy truck units going out of control on the highways, in all types of weather, is enough to stir up a few nightmares.

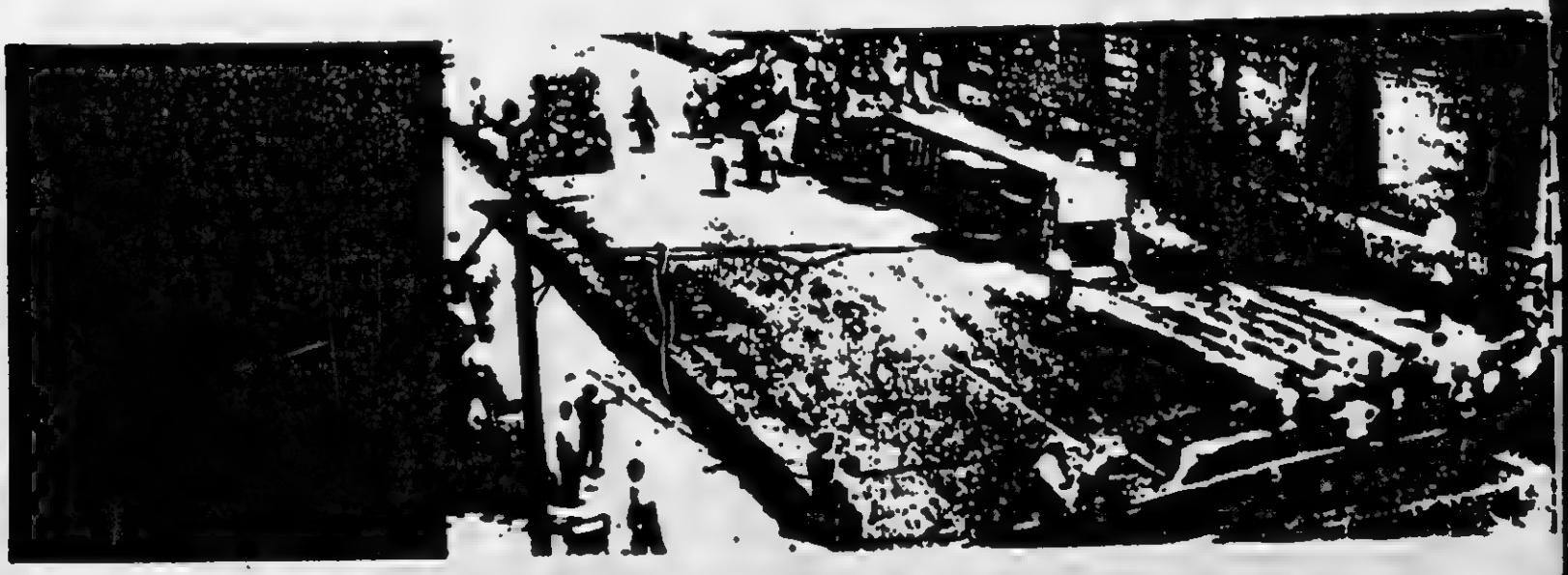
"Even the most steel-nerved of drivers can find cause for worry in the prospect of his own automobile being dashed to destruction by a lumbering giant of the highway."

Add dangerous explosives to that picture!

The American Automobile Association has intervened in the hearings to protest the extension of rights to trucking companies which will permit them to haul dangerous explosives. It says such truck traffic is a *"great hazard"* to highway users.

Railroaders, particularly engineers and firemen, are all too familiar with the sight of trucks stalled on highway-railroad crossings or of truck drivers speeding to get to a crossing ahead of a train. Many railroaders have lost their lives in such accidents involving trucks especially in accidents involving trucks hauling gasoline and other inflammables.

Add trucks loaded with dangerous explosives to that picture! Trucks and locomotives would be blown to bits and a frightening toll of dead and injured passengers



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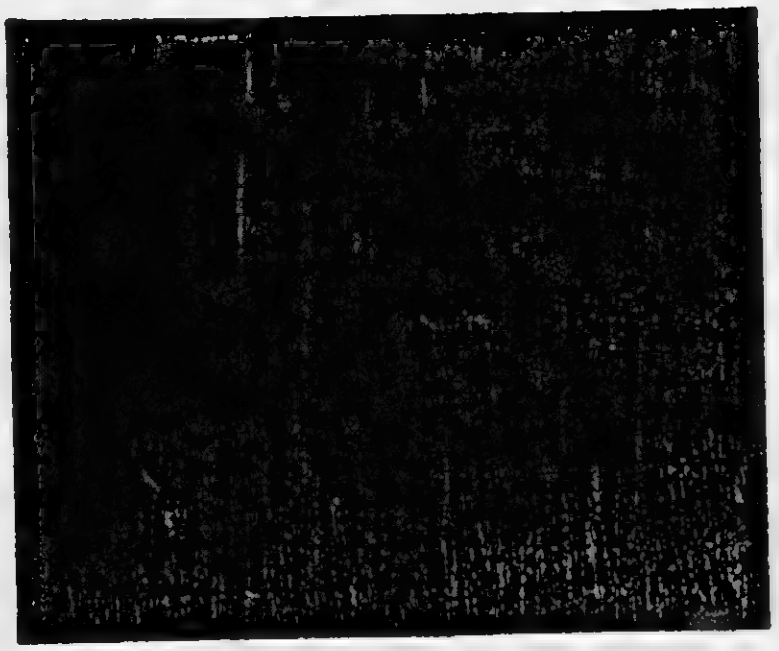

and train crew members would be taken. Actually, a small community could be wiped out if such an accident happened in a populated area.

Despite the best efforts of the railroads, national safety organizations and state and local police authorities, such accidents involving trucks on highway crossings happen frequently. It's just too much to hope that trucks loaded with dangerous explosives will escape involvement in such an accident.

And the accident could happen in your town.

Turn over such an explosives-laden truck on the main street of your town. Turn one over near your school or your church. Turn one over near a local factory. Not pretty pictures!

Of course, the railroads' main interest in opposing such petitions of the truckers lies in retaining the business on the rails. It is important, revenue-producing traffic; handling it furnishes jobs for railroaders. And the railroads can plead their case only on the ground that they already furnish safe and adequate service.

Let the record of the five years of World War II be proof. The railroads had only three accidents involving shipments of explosives and munitions. There were no casualties among railroad employees or outsiders.

Just one trucking company had more accidents than all of the American railroads, killing and maiming many people in those accidents.

Here, then, is another instance in which railroader-citizens can do an important missionary job in letting their friends and neighbors know of the menace represented in permitting highway truckers to handle movements of explosives and munitions. No town will be free of the risk of having its name in the date line of some newspaper account reading: *An explosives-laden truck exploded today on Main Street of (your town). There were killed and, at last report, injured were being cared for in local hospitals, churches and schools. Damage is estimated at $ ....*

It can happen in your town! ***

This truck might have been loaded with dangerous explosives but the sleeping residents of the town of Stockton Springs, Maine, may well be thankful that it carried twenty tons of potatoes. Otherwise, the town might have been almost wiped from the map and its sleeping residents would never have known what hit them.

It can happen in your town!

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Against NYC

NEW YORK CENTRAL "HEADLIGHT" NOVEMBER 1951

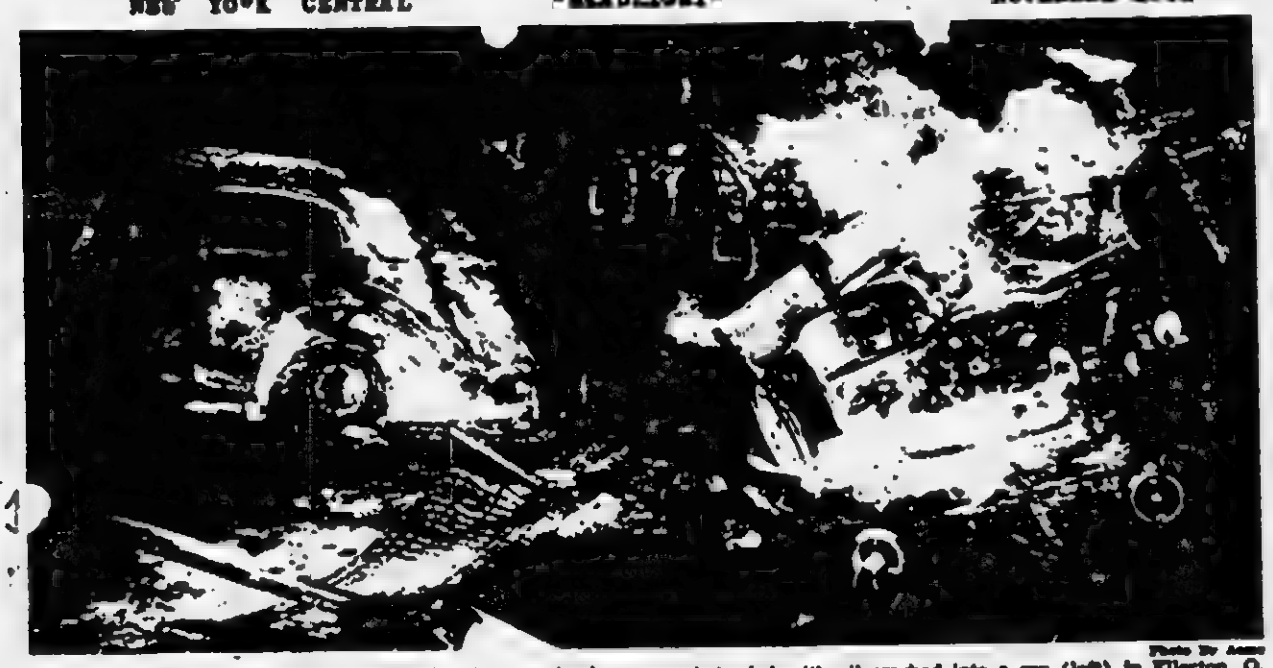

Photo by Acme

FIRE AND DEATH on the road: this is what happened when a truck loaded with oil crashed into a car (left) in Ellerton, O. Flaming oil spray ignited nearby house which burned to ground in 20 minutes. Truck driver and two car passengers were killed.

Danger—Explosives!

Truck operators are asking permission of the federal government to bring new and greater danger to busy, overcrowded highways where 20,000 Americans meet accidental deaths every year.

Half the tragic record of nearly a million fatalities in the last 50 years has been written since 1936 as motorized boxcars have all but taken over the country's roads.

The big truckers have asked the Interstate Commerce Commission to ignore the munitions-hauling safety record of the railroads and give highway freighters authority to haul explosives on public highways already jammed with vehicles.

Applications of more than 60 over-the-road truck operators are before the I.C.C. for this purpose. Opposition to the applications has been registered by the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Trainmen, the Order of Railway Conductors, the American Automobile Association, governors of several states and the Association of American Railroads.

There is no need to expose public highways to added dangers by hauling large quantities of munitions over them. A time-tested system of transportation for explosives already exists, based on sound safety principles, strictly policed and flexible enough to meet any emergency.

Explosives now are hauled by rail under exacting supervision by the Bureau of Explosives, maintained through the Association of American Railroads and operated largely as a safety agency of the I.C.C. itself.

The railroads have the great advantage of protected, non-public rights-of-way over which such traffic can be handled. Granting the requested authority to truckers would turn loose upon the highways thousands of tons of speeding destruction. The A.A.A. has pointed out to the Commission that a single 26-ton truck loaded with munitions is capable of destroying a fair-sized town.

Trucks hurtling along the road are subject only to the control of their drivers. The long record of weight limit violations and disregard for speed restrictions would indicate that a large percentage of over-the-road truckers are not very diligent when it comes to self-policing."

Most auto drivers have had the terrifying experience of a fast-moving highway boxcar coming up from the rear, blasting its air horn and rushing past. The smaller passenger car often is forced to swerve onto the road shoulder with the driver left shaken by the thought of what might have happened. How much more terrifying if the giant truck carried signs proclaiming: DANGER—MUNITIONS! Perhaps 30 or 40 tons of it!

During World War II America's railroads chalked up new records for safely transporting munitions. In 1944 alone, the railroads hauled 15 million tons of explosives for the armed services. During all the war years only three accidents occurred involving munitions trains. None of them resulted in a fatality. Even with the Korean war calling for supplies from our war industries, in 1950 only 1½ million tons were carried. Plainly, only a minor part of the railroads' capacity for handling munitions traffic is being utilized.

Today's highway traffic is far heavier and much faster than it was 15 years ago. In the last decade, as highway speeds have risen, the number of cars and trucks on the roads has more than doubled. In 1950, 50,000,000 motor vehicles were registered in the United States.

With the available railroad capacity for transporting munitions and the choked condition of our highways, the truckers have no sound reason for seeking this business. They are demonstrating their disregard of public safety by trying to place on the roads huge and dangerous loads which would jeopardize roadside homes and businesses, private cars and buses. Suppose, for example, a road freighter's brakes failed as it approached a school bus at 60 miles an hour! The possibility of such disaster must not be tolerated.

America's railroads have shown their ability and capacity for handling munitions traffic safely and efficiently. Consideration of the public interest must come first, and such consideration does not warrant adding dangerous explosives to an already impressive list of traffic hazards.

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IT CAN HAPPEN IN YOUR TOWN

TRUCK OPERATORS want to risk your life to make new profits by hauling dangerous explosives on the public highways. They are asking permission to subject towns and cities everywhere in this country to the dangers of explosions any single one of which could cause almost immeasurable damage, deaths and injuries. Presently, about 50 motor carriers are asking the Interstate Commerce Commission for permission to carry dangerous explosives over routes for which they already hold operating rights and over extensions of routes from which they hope to gain new traffic.

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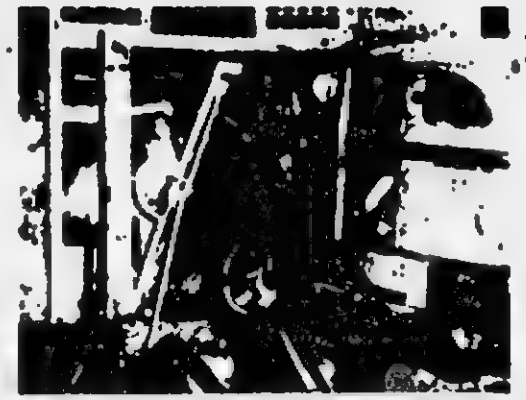

This truck might have been loaded with dangerous explosives but, fortunately, it was carrying cigarettes. The accident happened late at night in a heavily populated section of Washington, D. C.

The Department of the Navy follows similar procedures.

Those in charge of the military, naval and air installations in this country know the dangers of handling explosives and go to any lengths to insure the safety of uniformed or civilian personnel in handling munitions. The regulation cited is not directed specifically to truck movements of munitions and explosives but it is obvious that, in such instances, only compelling need is likely to cause military, air or naval authorities to intervene in behalf of truck carriers desiring to move munitions.

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Just how great is the danger to America's towns and cities from the possibility that the truckers may obtain permits to operate their already dangerous highway freighters made more dangerous with cargoes of high explosives and munitions? Some idea may be gained from the volume of such traffic carried by Class I railroads in 1950. They hauled 1,462,046 tons of ammunition and explosives—the approximate equivalent of 100,000 truckloads.

Let's see just how much damage one such truckload of explosives actually caused on March 7, 1942, near Smithfield, N. C. There have been other, and later, instances of truck explosions. *Ties* has chosen this one because it is possible to quote directly from records of the Interstate Commerce Commission as reported in the case of *Hughes Transp[illegible]m, Inc., Extension of Operations—Southeastern States*, decided December 18, 1946. The finding of the Commission was: *Applicant found not fit, willing, and able properly to perform the service proposed, or to conform to the requirements of the Interstate Commerce Act and of our rules and regulations thereunder. Application denied.*

Here is how the Commission describes the accident:

"In that accident, one of applicant's vehicles loaded with high explosives was struck by an automobile which failed to stop at an intersecting highway, although a stop sign was posted. The driver of the car was killed as a result of the collision. A fire resulted which firemen were unable to extinguish, and approximately 2 hours later the vehicle's contents exploded killing 6 persons, including the 2 occupants of a passenger car which passed through a road block, and 4 guests of a nearby hotel. In addition, 40 persons were injured, and property damage in the amount of $626,276 resulted."

In the same case the Commission reported another accident in these words:

"The next accident investigated occurred on March 22, 1941, near Forest City, N. C., in which one of applicant's

Over

If the working interests of this country have faith in their own future, and also in the United States as it is safeguarded by the danger of being sent, unjustly or unconstitutionally, "down the river."

Read this story. It will be easy to answer your national duty committee in your own defense. Here are some of the things you can do:

Urge your locally elected officials to appear in opposition to the truckers at the hearings now being held by the Interstate Commerce Commission in Suite 1106, 20 West Jackson Street, Chicago, Illinois each. Insist that your local officials oppose the truckers' applications. Rules of procedure of the I.C.C. permit such appearances without filing a petition to intervene or other pleading. In other words, your local representatives can say for you: "Our town is opposed to running the risk of having a truck, loaded with dangerous explosives run over it."

Urge your local Chamber of Commerce, trade associations, civic clubs and the like to do the same thing.

Be certain to support completely the action being taken by a number of the railroad brotherhoods protesting the extension of dangerous explosive handling rights to trucking companies.

Enlist the support of your local parent-teachers groups. Either have them represented directly or have them insist that their state organizations be represented in Chicago.

Speak up on a citizen and demand that your state governments (particularly the highway, police and safety departments) be represented at Chicago to protect you from the dangers involved in permitting widespread truck movements of dangerous explosives.

Do anything else you can to inform others and enlist their support in what is your common cause of fighting a great potential danger.

Don't take a chance on being one who in years to come might have to confess to himself that "I helped turn a mad dog loose on our main street."

It can happen in your town!

Over

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EXPLOSIVES (B)

It is easy to imagine what might have happened here if this truck had been loaded with war munitions. Instead of burning up just the truck the whole bridge might have been blasted.

A dangerous mixture . . .

. . . TRUCKS PLUS EXPLOSIVES

TAKE a convoy of "highway boxcars," add unlimited quantities of dangerous explosives and ammunition to their cargo, mix well with the motoring public and you'll get a combination ready to go BOOM anytime.

No, we're not advocating such a mixture but certain trucking companies are. More than 60 operators of "highway boxcars" have petitioned the Interstate Commerce Commission for permission to haul unlimited amounts of explosives and ammunition over public highways and streets.

The I.C.C. began hearings on the truckers' petition last September. Mounting public resentment coupled with protests from organized groups all over the nation prolonged the hearings, which are still continuing as this is written.

Representatives of railway labor have added their voices to the protesting witnesses, testifying that truck loads of dangerous explosives on the country's highways constitute an unnecessary hazard to life and property.

Other opponents urging that the Commission deny the application include such influential groups as the American Automobile Association, the Congress of Parents and Teachers, state highway officials, ranking officers of state police patrols, the Nations Sheriffs' Association, numerous state legislatures, various shippers and of course the nations' railroads.

Railroads were quick to oppose the application, for munitions and similar dangerous commodities have traditionally been moved by rail, except on local haul.

Rail Movement Proved Safe and Efficient

Railroad operating witnesses testified that the carriers are in a position to provide fast and efficient transportation for explosives and munitions. They produced records showing that the rail carriers handled virtually all munitions moved during World War II without loss of a single life while such shipments were being moved.

Railway Age, a well-known railroad magazine, says that the "railroad movement of munitions and all other dangerous articles is now and always has been under constant and rigid control. There is no comparable policing of highway movements."

That magazine credited the Association of American Railroads' Bureau of Explosives with the development of efficient methods of packing and transporting dangerous commodities such as explosives and poison gas. The magazine cited railroad safety records as proof that safety regulations are policed rigidly and consistently in such movements.

This picture of safe, dependable transportation by rail is the opposite of that painted for highway transportation. Witnesses before the Commission described the menace to public safety and welfare

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inherent in the movement of explosives over highways.

Director of Public Works James R. Palmer of Rock Island, Ill., said the driver of any truck, no matter how careful, "has no control over whether or not he may be involved in an accident" and that introduction of additional explosives-laden vehicles on the streets "will create not only a rather difficult situation for the city to handle, but also introduce the psychological effect which might increase the hazard over what it is at the present time."

Capt. Frank Reiser of the St. Joseph, Mo., police department, recounted the high indignation of townspeople in November, 1949, when a convoy of poison gas was routed through their town by the Army.

One of the 15 trucks was involved in a collision. Public criticism of the police was immediate, Reiser said, adding that because of traffic conditions "it is not safe" to move such dangerous cargoes in St. Joseph.

The sole supporter of the truckers' application for permission to haul the dangerous cargoes is the Department of Defense. Representatives for the Department call the hauling of military explosives on public highways "a military necessity" and their support is dictated by a "desire to save money."

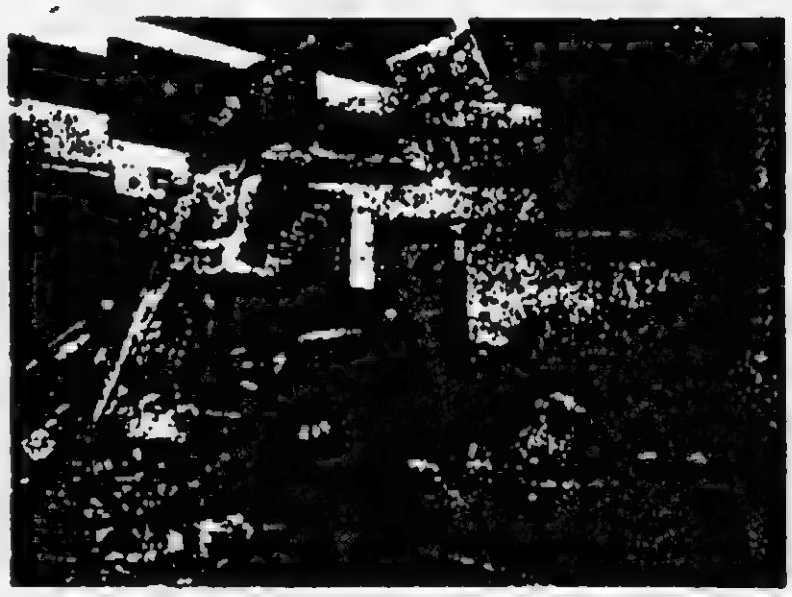
It is a mystery to this writer how there can be a military necessity now when the railroads successfully transported most of the munitions and other dangerous commodities during the last war. In fact, the Department's witnesses offered no complaint on railroad transportation of the dangerous commodities.

Save Pennies—Ignore Danger

The price angle is a different story. Truckers have been bidding on some movements—the most attractive—at rates slightly under published railroad rates. This saving, a matter of pennies, certainly ignores the possibility of damage to life and property that goes with highway transportation.

Dr. Melvin A. Cook, professor of metallurgy at the University of Utah, and formerly a research chemist in explosives for DuPont, warned that "an explosion of 20,000 pounds of explosives" could destroy or render temporarily useless "any bridge in the country, including such bridges as those across the Missouri, Mississippi and Ohio Rivers."

How far would the pennies saved go towards rebuilding such damage?



This oil tanker got out of control and smashed up several shops along the highway before stopping. If this truck had been loaded with explosives they might still be looking for a small town in Colorado, the locale of the accident.

The Commission also heard witnesses testify that it would be nearly impossible to prevent sabotage or hi-jacking once the trucks are on the highways.

Dr. Cook noted that "the simplest, most efficient and most sure way to produce an explosion in any explosive substance is, of course, by the intentional use of a detonator." The witness pointed out that shipment of explosives in trucks "from this viewpoint would present many opportunities for sabotage."

"Time bombs and fuses are simple and easy to use and protection against their use in connection with the trucking of explosives would be extremely difficult," he added.

Furthermore, truck transportation of explosives always faces the serious threat of explosion should gasoline be set afire, he said.

"The situation common to truck tractors, in which the gas tanks and explosive cargo are in very close proximity, provides an added and serious explosion hazard especially whenever the truck is involved in a wreck, for even if the cargo does not explode by impact, or shock, or friction, the hazard remains that a fire will break out in the gasoline and thereby involve the explosive cargo," Cook added.

Munition depots are usually located and policed in such manner as to minimize damage to the public. Why should the I.C.C. turn such dangerous commodities over to the truckers to spread the danger over countless highways?

Some trucking companies already have temporary permits to haul dangerous commodities, but the I.C.C. has withheld blanket approval such as sought by the 60 trucking firms. We believe that every motorist and public minded citizen should rise in opposition to this latest move by greedy truckers to add further to the hazards of driving on public highways.

Some truck operators have demonstrated their utter disregard for the driving public by their flagrant abuse of legal load limits. Not satisfied to merely smash the highways with 30, 40 or 50-ton loads, they would now like an opportunity to blow the highways apart.

Railroad workers, like the railroads themselves, have no quarrel with truck competition itself. But they can and should quarrel with this business of overloading and transportation of dangerous explosives.

The only answer appears to be the fixing of absolute limits on the size of trucks and their loads. If the I.C.C. approves the truckers' application to haul explosives, that Government agency should be severely criticized by the entire country.

However, if and when it is shown conclusively that requirements of national defense and welfare demand motor carrier transport of explosives, *temporary or emergency permits* should be granted by the Interstate Commerce Commission.

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EXPLOSIVES

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Congressional Record

United States of America

PROCEEDINGS AND DEBATES OF THE 82d CONGRESS, SECOND SESSION

Vol. 98 WASHINGTON, MONDAY, FEBRUARY 18, 1952 No. 25

Protest Hauling of Dangerous Explosives Over Nation's Highways

EXTENSION OF REMARKS
OF
HON. ZALES N. ECTON
OF MONTANA
IN THE SENATE OF THE UNITED STATES
Monday, February 18, 1952

Mr. ECTON. Mr. President, I ask unanimous consent to have printed in the Appendix of the Record a very important article entitled "Protest Hauling of Dangerous Explosives Over Nation's Highways." This article presents a public safety problem which affects every community in the United States. The article appeared in the February 1952 issue of the Locomotive Engineers Journal.

There being no objection, the article was ordered to be printed in the Record, as follows:

PROTEST HAULING OF DANGEROUS EXPLOSIVES OVER NATION'S HIGHWAYS

The Interstate Commerce Commission, besieged by upwards of 60 trucking companies for permanent authority to haul dangerous explosives over the Nation's highways, resumed hearings on the applications in Washington, January 8.

Mounting public resentment against the hazards of trucking large quantities of explosives and ammunition over the highways have prolonged the hearings, which began September 17, in Chicago, and which originally were expected to be completed in 5 or 6 weeks. Several more weeks of testimony now are anticipated.

Protesting witnesses—including spokesmen for railroad labor—from coast to coast and from the Gulf to Canada—from all parts of the Nation—have testified that truck loads of explosives on the highways constitute an unnecessary hazard.

Representatives of the American Automobile Association, the executive committee of the Governor's Conference, as spokesman for the governors of the various States, the Congress of Parents and Teachers, State highway officials, ranking officers of State police patrols, the National Sheriff's Association, the International Association of Chiefs of Police, numerous municipalities, State legislatures, shippers, and others, appeared to testify before ICC Examiner B. E. Stillwell, all urging the Commission to deny the applications.

Witnesses opposing the applications in behalf of railroad labor unions emphasized their interest in protecting the safety of their members and the general safety of the public.

Brother Guy L. Brown, first assistant grand chief engineer of the Brotherhood of Locomotive Engineers, told the ICC that in his opinion motor truck transportation of explosives creates substantial hazards to locomotive engineers and other train employees as well as to the trains themselves, those riding the trucks and those who might be in the vicinity of any explosion.

Speaking for the Order of Railway Conductors, W. D. Johnson, union vice president and national legislative representative, expressed concern for "both the safety and general welfare of railroad employees and the public" and said his group took the position "that dangerous explosives are commodities which are too hazardous to be moved over the public streets and highways."

Furthermore, Johnson stated, these experiences shown it is almost impossible to prevent collisions at crossings "there would be great possibility of collisions at grade crossings between trains and trucks loaded with explosives."

Johnson also held that truck movement of explosives would deprive the railroads "of revenues to which they are justly entitled."

Martin W. Miller, director of the legislative department of the Brotherhood of Railroad Trainmen, in opposing the applications, said that the BRT was fearful that if such applications were granted "the disregard for human safety and welfare will increase proportionately with the increase in the number of trucks hauling dangerous explosives."

Miller said the trainmen's union opposed the applications in the interest of safety for its members, both as employees of railroads and [illegible] and as citizens and property owners.

A munitions report warned that truck-hauled explosives faced their greatest threat in the possibility of fire. Truck-hauled explosives also would be highly vulnerable to sabotage, he added.

Dr. Melvin A. Cook, professor of metallurgy at the University of Utah, formerly was a research chemist in explosives for E. I. du-Pont de Nemours & Co., Inc.

Dr. Cook warned, too, that "an explosion of 20,000 pounds of explosives" could destroy or render temporarily useless "any bridge in the country, including such bridges as those across the Missouri, Mississippi, and Ohio Rivers."

Shippers opposing the applications fear that if the railroads continue to lose high-rated traffic, such as explosives, they will be forced to raise freight rates on commodities that still move by rail.

Furthermore, trucks can only perform "possibly faster but not better" than the railroads, according to J. Earl Bryan, general traffic manager of the Wisconsin Paper & Pulp Manufacturers, Chicago, Ill., who told the Commission trucks "cannot perform a better service than the railroads."

Spokesmen for another shipper, T. C. Burwell, vice president of the A. E. Staley Manufacturing Co., Decatur, Ill., called he railroads the "backbone of our national transportation system" and said that "without question, the financial plight today of the rail carriers is due to the diversion of traffic from rail carriers to other modes of transportation."

R. D. Walter, traffic manager of the Farley Electric Manufacturing Co., Dubuque, Iowa, and a stockholder in Farley-Loetscher Manufacturing Co., said he and those he represented "have great apprehension over the loss of railroad tonnage, for fear that in the end, if it continues, they will be called upon to pay higher freight rates in order to sustain the railroads."

The executive committee of the Governor's Conference recommended that "no mass grant of permits for permanent authority to transport explosives by motor carriers should be given by the Interstate Commerce Commission." In event of a national emergency, the committee recommended that "where it is shown conclusively that the national defense effort requires the transport of explosives by motor carriers, the Interstate Commerce Commission should grant temporary permits on an individual basis."

Railroad-operating witnesses testified that the carriers are in a position to provide fast and efficient transportation for explosives and munitions. They produced records showing that the rail carriers handled virtually all munitions moved during World War II without loss of a single life while shipments were being moved by rail.

E. V. Hill, chairman of the freight traffic committee of the Central Territory Railroads, Chicago, said that at no time in the past 3 years or more has any Government representative at a meeting of chief traffic officers of class I railroads complained "of the service being rendered by the railroads."

Hill said that World War II established the "adequacy of rail transportation in the movement of munitions and explosives." During the war, furthermore, the movement of rails cargoes utilized railroad facilities "to a degree far in excess of the present defense program."

Operating men from railroads throughout the country testified along similar lines, showing the manner in which the railroads had responded to World War II demands and the present availability of rail equipment to meet any new defense requirements.

Various nonrailroad witnesses emphasized that truck transportation of munitions and other explosives would be a constant threat to the safety of the public, particularly school children traveling by busses.

Witnesses asserted frequently that local roads already were inadequate for today's traffic and that injection of explosives-laden trucks would complicate an already hazardous situation.

R. D. Booth, of Benton, Ark., director of traffic and safety for the Arkansas State Highway Commission, opposed the applications for munitions hauling permits on behalf of Gov. Sid Smith.

Booth called Arkansas' highway system "woefully inadequate" and said the State highway system contains "more lineal feet of bridge structures per mile" than can be found in any other State—[illegible] feet, or about 60 miles.

Booth asserted that today's military need "does not warrant the extension of permanent rights to engage in the business of transporting dangerous explosives over the highways of Arkansas."

"We strongly object to explosives being hauled anywhere and everywhere over our highways," he declared.

California State Senator Randolph Collier, chairman of the joint fact-finding committee of the California legislature on Highways, Streets and Bridges, said the committee "unalterably opposed" granting "anything on high explosives" in California.

Director of Public Works James A. Palmer, of Rock Island, Ill., said the driver of any truck, no matter how careful, "has no control over whether or not he may be involved in an accident" and that introduction of additional explosives-laden vehicles on the streets "will create not only a rather difficult situation for the city to handle, but also introduce the psychological effect which might increase the hazard manifold over what it is at the present time."

Traffic accidents are rising, he said, and explosive trucks would increase the rate of gain in accidents.

Capt. Frank Reiser, of the St. Joseph, Mo., police department, recounted the high indignation of townspeople in November 1948, when a convoy of poison gas was routed through their town by the Army.

One of the 18 trucks was involved in a collision. Public criticism of the police was immediate, Reiser said, adding that because of traffic conditions, it is not safe to move such dangerous cargoes in St. Joseph.

Walter R. Scott, executive vice president and traffic commissioner of the Kansas City Board of Trade, opposed "any proposition of this kind which seeks to take business, highclass business, off the railroads, and makes it necessary for them to look to our business and other businesses, to make up a fair return on their operation."

He admitted under cross-questioning that "in a small way" demand for high-grade ferrous scrap for munitions movement might be the cause of a shortage of cars for grain. Asked if he opposed that, he replied:

"No, I would let them handle more explosives and make more money to buy those cars. That is what I would do."

Two Oklahoma City residents, Lloyd Noble, manager of the Oklahoma Safety Council, and Mrs. W. A. Jordan, State treasurer and member of the executive board of the Oklahoma Congress of Parents and Teachers, voice Oklahoma opposition to the applications.

Palmer said he was protesting because he believed hauling munitions and other explosives in trucks would place in jeopardy the safety of Oklahoma residents. He declared that the many vacation that citizens in unrelated are present in truck accidents involving explosives.

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Questioned as to her knowledge of explosives, Mrs. Jurkins retorted that "dangerous explosives, I presume, are dangerous explosives. I have noted that unloaded guns are always the ones that kill the children. Even firecrackers that are safe have caused the loss of eyes and limbs to many school children. Therefore, when it says dangerous explosives, I figure they are dangerous."

"My purpose," she declared, "is to oppose the transportation of dangerous explosives for the sake of our boys and girls on the highways of Oklahoma."

Mrs. Jurkins testified that 4,500 schools in the State house 464,786 children and that 3,150 State-operated school buses carry two-thirds of the State's school-age children every day.

"A collision between a school bus and another vehicle where there is no fire or explosion is horrible enough, but a collision between a school bus and a truck loaded with dangerous explosives might well result in a catastrophe."

BALTIMORE AMERICAN
February 17, 1952

Civic Groups Oppose Use Of Highways To Transport Explosives

By DAVID SENTNER
Sunday American Washington Bureau.

WASHINGTON—The increased transportation of dangerous explosives over public highways as the result of the growing defense program poses a national problem.

The Interstate Commerce Commission, conducting hearings on haulage of explosives by truck, is confronted with the following situation:

Numerous community groups, such as the National Congress of Parents and Teachers, vigorously oppose the granting of permanent authority to common carriers for transportation of dangerous explosives over public highways.

PRESENTS RESOLUTION.

Mrs. Ethel G. Brown of Los Angeles, chairman of the standing committee on legislation of the parent and teachers group, representing an enrollment of six and one half million members, presented a resolution recording the following factors influencing the group's position:

Possibility of accidents involving school buses, passenger cars and commercial vehicles.

Likelihood of serious damage by explosions to subsurface utilities, bridges and tunnels.

Difficulty of policing mass highway transportation of explosives.

The executive committee of the recent Governors conference opposed unnecessary transportation of dangerous explosives over public highways but conceded that motor carriers will have to transport a portion of the total explosives required by the defense effort.

REASONS LISTED.

The reasons cited for using motor carriers were listed as including:

1. States which lack adequate rail facilities and thus require explosives to be brought in by motor carriers.

The movement to decentralize American industry, particularly defense industries, resulting in location of many plants in areas not easily accessible by rail.

Motor transport of explosives is required to ship them from point of origin to railroads and from railroads to point of destination.

In some areas the transportation of explosives by motor carriers will be more economical and speedier than use of other types of carriers.

The American Automobile Association has called on the ICC to prohibit transportation of explosives over public highways except in cases of genuine necessity.

More than 5,100 trucks and trailers will be authorized to haul dangerous explosives through the streets of New York city if applications now pending before the ICC are granted.

BALTIMORE AFFECTED.

A survey reveals that 15 different trucking concerns have requested permanent authority to carry explosives along routes which include New York city. The 15 companies own and operate 488 trucks and 4,652 trailers.

Nearly 4,300 trucks and trailers will be authorized to haul dangerous explosives through the streets of Baltimore, if applications now pending before the ICC are granted.

A survey reveals that 14 different trucking concerns have requested permanent authority to carry explosives along routes which include Baltimore. The companies own and operate 477 trucks and 3,805 semitrailers.

TRANSPORT TOPICS
FEBRUARY 18, 1952

8 Carriers Pull Out of Explosives Case in Ire Over Record

Counsel Charges Packing And Distortion by Rails Make Attempt to Obtain Motor Rights Futile.

As the stage was set last week for the opening February 11 of hearings in a consolidated case in which 48 motor freight carriers have been seeking continuing authority from the Interstate Commerce Commission to transport explosives and ammunition, counsel for eight of the applicants told the ICC they want to pull out of the proceedings "without prejudice" to a possible later request for operating rights.

Edward F. Sheridan, Chicago attorney informed the Commission in effect that his clients want out because a record is to be taken by stipulation from the "dear explosives case," in which hearings have just been completed, has been stacked against the motor carriers by railroad opponents.

List of Withdrawals

Mr. Sheridan asked dismissal of applications of the following:

Keesler Motor Express Co., Inc., and its affiliates, Seaboard Freight Lines, Inc., and National Freight Lines, Inc., all headquartered in Chicago; Hooker Cartage Co., Kansas City; Central Freight Systems, Inc., Chicago; McNamara Motor Express, Inc., Kalamazoo, Mich.; Brady Transfer & Storage Co., Fort Dodge, Iowa, and Re Mar Transport Co., Inc., St. Louis.

The "consolidated" case is docketed as MC 1515 (Sub No. 170), et al. It is a companion to MC 299 (Sub-No. 44), in which Ross & Co., Kansas City motor freight carrier, seeks continuing authority to transport explosives and ammunition.

In extensive hearings in the Ross case it had been stipulated that evidence there received by ICC Examiner H. F. Sewell would become a part of the record in the "consolidated" case.

Notice Sent to Manning

Mr. Sheridan directed his withdrawal notice and request for dismissal to W. J. Manning, director, ICC Bureau of Motor Carriers, in a letter which said:

"During the midpart of the year 1951, the Department of Defense of the United States indicated a need for adequate service in the transportation of explosives between certain points within certain areas and that the three branches of the Armed Services, that is, the Army, Navy and Air Corps, would support applications to the Interstate Commerce Commission by motor carriers pursuant to provisions of the Interstate Commerce Act for authority to perform such service. Representatives of the Department of Defense were very careful, and properly so, to take no position between modes of transportation or as between carriers but did indicate a military need for additional and adequate service.

"In an endeavor to make such service available via motor carrier transportation, certain motor carriers made appropriate applications to the Commission for authority to perform the transportation service pursuant to the need for such service as indicated by representatives of the Department of Defense at the hearing on the applications in the course of making a consolidated record. That hearing began at Chicago, September 17, 1951, continued intermittently and is to resume again February 11, 1952.

"Practically every railroad in the United States of any consequence, individually or through railroad associations and railroad groups, represented by a battery of railroad counsel vigorously and doggedly opposed every application, and through their continual protests, innumerable objections and motions so packed and distorted the record—in some instances invading the prerogative of the applicants themselves in what ordinarily would be an orderly manner of an applicant to present its case.

"As a result, the simple issues to be developed before the Commission pursuant to law in the processing and deciding of such type of applications have been made to appear as a sinister attempt on the part of motor carriers to foist upon the American people a highly dangerous and grotesque situation.

"Through the unmistakable efforts of the railroads, the matter has been exploited up and down the entire country in the press, before Congressional committees, before many State and the National Legislature, and before public assembly groups and a radio audience.

"The interpretation and administration of the National Transportation Policy as set forth in the opening provisions of the Interstate Commerce Act has been boldly thrust into the proceedings in a manner far out of proportion to the simple issues involved, that is, providing an adequate service that was furnished by motor carriers all during the recent War in a most admirable manner without accident or incident.

"In the face of such a record, the railroads and others assisting them contend most vociferously that motor carriers should not be permitted to handle explosives, notwithstanding the rails' own not too enviable a record in the handling of explosives—one incident, as an example, occurred just recently.

"Ordinarily, such comparisons are not mentioned in proceedings of this kind but one has no alternative when the railroads insist on dealing with such things in an unreasonable manner and when all the motor carrier applicants want the Commission to do is to hear the applications in the manner that such applications can be expected to be heard as provided by law with the applicant given a reasonable opportunity to perform its burden of presenting its case in an orderly fashion and then for the Commission to decide the issues, and in doing so properly take into account the adequacy of other existing available service and the fitness and ability of the applicant without subjecting the record or the consideration of the Commission to extraneous material or showing by protestants that has absolutely no bearing on the real questions that should be determined.

"In view of the voluminous record made so far at the hearings, the tremendous amount of time that the making of such a record has entailed, the expense that has been incurred by everyone concerned, including the Commission, and the position that the applicants find themselves at this point in the proceedings, it behooves the applicants, for whom the writer is acting as counsel in the filing and presentation of the applications of such applicants to the Commission, to determine the advisability of going forward with their individual application.

"Therefore, in view of the entire situation as dealt with above, including the prospect of a further and much more voluminous record, the entailing of a great deal more time and considerable additional expense, it is the desire of each of such applicants and this is to request that the applications of the following motor carriers be dismissed."

Then followed the names of the eight carriers, with a note that such desires dismissal "without prejudice."

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EXPLOSIVES

2-763-62-H

New York Central Headlight
January, 1952

THIS SCENE OF DEVASTATION WAS RESULT OF FAILURE OF A TRUCK DRIVER TO OBEY WARNING SIGNAL AT RAILROAD CROSSING

Gas Truck Causes Fiery Crash

WHEN Engineman Howard Cole and Fireman H A Tuebner took The Michigan out of Detroit for Chicago shortly after noon on the last day of November, there was every indication it would be simply another routine trip. Less than three hours later, in Kalamazoo, Mich, both Mr. e and Mr Tuebner were under treatment for severe burns, sustained through no fault of their own

A huge truck, loaded with nearly 8,000 gallons of gasoline, had approached the Central's tracks at Comstock, Mich. east of Kalamazoo. Although he say he saw the flasher lights warning him to halt, the driver of the truck proceeded across the tracks. The oncoming train was unable to avert the crash. A series of explosions resulted, followed by a raging fire that destroyed property valued at several million dollars. Damage to the twin-engine Diesel locomotive and the train alone has been placed at nearly a million. Fortunately, no lives were lost and only six were injured.

Flaming gasoline was sprayed over the entire 10-car train but Engineman Cole, remaining calm in the face of the emergency, brought his train to a safe stop within its own length A quick-thinking eye-witness grabbed a hand fire extinguisher from a parked truck and sprayed the engine cab, enabling Mr Cole and Mr Tuebner to escape The truck driver was hospitalized in critical condition

A house near the track was engulfed in flames A passerby helped a woman and three children get out of the house just in time to avoid certain death. The heat of the blaze burned out telephone cables strung on poles near by.

Five fire companies from Kalamazoo and other communities answered the alarm and fought the fire for almost an hour before bringing it under control.

Meanwhile oil shipping firms continue to ask the Interstate Commerce Commission for permission to carry explosives over public highways It is frightening to consider what would have happened if the truck in The Michigan's path had been loaded with T N T. instead of gasoline. How many innocent lives would have been lost: how much more needless damage to property?

This case gives striking support to the many protests against the trucker . plan already registered by the American Automobile A sociation the governors of several states, and the Association of American Railroads. The railroads are fully equipped to handle explosives on their own rights-of-way, under careful policing methods, well-tested under wartime pressures. Allowing explosives to be trucked over public highways would invite the multiplication of incidents like the one at Kalamazoo, only on a larger and more devastating scale What method can be relied on to make sure the driver of a truckload of munitions would heed the flasher lights at a railroad crossing, or the traffic signal on Main Street?

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PHILADELPHIA INQUIRER
January 30, 1952

Perilous Truck Cargoes

A case before the United States Supreme Court, just decided, was based on whether the Interstate Commerce Commission had phrased too vaguely a regulation that truck drivers transporting inflammables and explosives must avoid heavily traveled routes.

This issue arose from the explosion of a truck in the Holland Tunnel under the Hudson River in May, 1949. The vehicle contained carbon bisulphide, described as a "dangerous and inflammable liquid." An indictment charged the trucking company with sending that kind of cargo three times through the tube. The blowup came on the third trip. It caused great damage: more than 60 persons were injured and a fireman died.

The indictment was thrown out by a U. S. District Court on the ground that the ICC regulation was vague in its requirements. N[illegible] decisions of a Circuit Court and the Su[illegible]eme Court have found the regulation specific enough and ordered the case to trial.

The real issue—whether the trucking company deliberately chose a dangerous route—ought to be settled in that way on the basis of evidence rather than a technicality.

It should be firmly established that large trucks must be operated on heavily traveled highways with extreme care for public safety, and certainly the principle ought to be strictly applied in the transportation of excessively dangerous materials.

OMAHA WORLD HERALD
January 19, 1952

Delay on Explosives

The Interstate Commerce Commission had expected to begin hearings on February 13 on the application of 60 trucking firms for permanent, general authority to haul explosives over the public highways, but now it appears that the hearings will be delayed. A nationwide wave of protest is responsible.

It seems to us that there is no excuse whatever for hauling explosives over public highways—and city streets—when rail facilities are available.

Omaha has a prime interest in this matter. As many as 10 explosives trucks, operating on temporary, emergency permits pass through the city in a day. They cannot be routed around the city, because of the Missouri River bridges. They are not only a hazard, but they create a heavy drain on police man power, since policemen must escort the trucks through the city.

If the truckers get general authority to haul explosives, this traffic will increase. It ought to be held to the absolute minimum.

CONGRESSIONAL RECORD
JANUARY 28, 1952

Transporting Explosives Over Our Public Highways

EXTENSION OF REMARKS
OF
HON. TIMOTHY P. SHEEHAN
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Monday, January 28, 1952

Mr. SHEEHAN. Mr. Speaker, I think it worthy to note that the parents and teachers associations throughout the country are taking such a vital interest in the broad national issues of the day. I think this interest is evident in the resolution recently adopted by the National Congress of Parents and Teachers, dealing with the proposed granting of permanent authority to common carriers to transport dangerous explosives over public highways. The resolution follows:

STATEMENT OPPOSING THE GRANTING OF PERMANENT AUTHORITY TO COMMON CARRIERS FOR TRANSPORTATION OF DANGEROUS EXPLOSIVES OVER THE PUBLIC HIGHWAYS

Mr. Chairman and Members of the Interstate Commerce Commission, the National Congress of Parents and Teachers is an organization with an enrollment of 6,500,510 members—mothers, fathers, teachers, and other interested citizens, working for the welfare of children and youth through 50,000 parent-teacher associations. For years the organization has carried on a vigorous safety program, including the support of measures designed to promote safe travel on streets and highways by motorists, bicyclists, pedestrians, and other users.

It has come to the attention of the National Congress of Parents and Teachers that 50 or more motor carriers are requesting permits to transport dangerous explosives over public highways, a proposal that we regard with great apprehension.

The present appalling traffic accident rate seems to call for the employment of every possible means of improving highway conditions, rather than for the injection of new hazards. Upon investigation and after consultation with State highway departments, police officials, and others, we are convinced that no permanent authority should be granted for hauling dangerous explosives on the highways, and that the pending applications should be denied as not being in the public interest.

Among the factors influencing our decision are: the present poor condition of the highways and the limitations upon construction; the difficulty of policing mass highway transportation of explosives; the probability of handling of dangerous materials by inexperienced personnel; the possibility of accidents involving school busses and other passenger cars and ordinary commercial vehicles; and the likelihood of serious damage by explosions to subsurface utilities, to bridges and tunnels, as well as to buildings adjacent to the streets and highways.

We are aware that representation is made that the national defense requires that ammunition and other dangerous explosives be carried by motor trucks. We respectfully request that the Interstate Commerce Commission consider each situation on its own merits, and that where it is clearly established that because of the location of a military installation or defense plant, or some unusual circumstance the national defense program will be seriously impeded unless a motor carrier is employed for transport, a temporary permit only be granted the carrier for such service, and that full opportunity be given the State authorities involved to prescribe the conditions under which the operation will take place.

NATIONAL CONGRESS OF PARENTS AND TEACHERS,
By ETHEL G. BROWN,
(Mrs. Rollin Brown),
Chairman, Standing Committee on Legislation.
LOS ANGELES, CALIF., *January 8, 1952.*

We Implore ICC Protection

EXTENSION OF REMARKS
OF
HON. MELVIN PRICE
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Monday, January 28, 1952

Mr. PRICE. Mr. Speaker, under leave to extend my remarks in the RECORD, I include herewith a very timely editorial from the Belleville (Ill.) News-Democrat.

I hope the Interstate Commerce Commission will heed the admonition. There are far too many deaths on the Nation's highways. I am confident many accidents can be avoided by closer control on the commercial users without in any way discriminating against them. We want our highways to be commercial arteries contributing to the development of our country's economic system, but we want them safe ways, and on that we should put major emphasis.

The News-Democrat editorial follows:

WE IMPLORE ICC PROTECTION

It is easy to understand why people all over America are jittery about the increasing number of big trucks hauling dangerous high explosives on public highways and through home towns.

Most citizens are well aware of the dangers with which our public roads are fraught, and they are justifiably fearful of compounding their risks without any additional complications like this.

The Interstate Commerce Commission is the Government agency which regulates the kind of cargo which carriers may load and also to where they may haul it. The Interstate Commerce Commission stands indicted of a serious disservice to the people of America when it lets any trucker slip a powder keg under public security.

And when accidents occur like the one up at Eureka, Ill., last Sunday afternoon, that's too close to home for comfort or complacency. A short distance outside that central Illinois community a large semi-trailer loaded with 20,000 pounds of dynamite for the United States Army wound up overturned in a ditch next to the road.

As so often is the case, the wreck was the other fellow's fault. An auto came 'round the curve partially in the trucker's lane. The driver said he pulled to the right to avoid a pile-up and that as he did so the transport hit ice, spun completely around, and then slid off the road.

Miraculously the cargo didn't go off and nobody was hurt. But dynamite exploding under the impact of a sharp blow and a head-on collision between the two vehicles could easily have detonated an explosion like an atom bomb.

Fifteen tons of dynamite—the load of this particular truck—would be enough to blow a town the size of Millstadt completely off the face of the earth.

Incidentally, this truck was operated by the Rice Co., the same concern whose huge vans, conspicuously labeled "Dangerous Explosives," frequently are parked along the South Belt Line a few hundred feet south of our own Roosevelt [illegible].

Thus far we've been lucky that all the cars rounding that curve have been under control. But let a runaway bump into one of those "dangerous explosives" freighters and Belleville will find itself saying with a disaster of its own much worse than West Frankfort's.

There's no telling how much longer our luck will hold. But this much is clear, we can't afford to delay in implementing preventive measures. Therefore, we earnestly implore the Interstate Commerce Commission to reconsider whatever concessions it has made to truck lines to haul high explosives through this area, and to put an immediate stop to this extremely dangerous practice.

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TOLEDO BLADE:
DECEMBER 7, 1951

More Explosives On Roads Fought

Expansion Of Truck Facilities Opposed

By GEORGE ZIELKE
Toledo Blade Bureau

WASHINGTON, Dec. 7—The States of Ohio and Pennsylvania have joined with railroad, labor and police organizations in opposition to expansion of highway trucking of dangerous explosives.

The Interstate Commerce Commission is holding hearings on about 60 applications for permanent authority to engage in interstate trucking of such explosives, in some cases over additional routes.

In general, the applications deal with "dangerous explosives, ammunition and component parts thereof"—language which the railroad opposition (which wants such cargo carried on the rails) says includes "high explosives, both primary and secondary, and it also includes dangerous commodities such as poison gas and projectiles loaded with radioactive materials."

Road Near Toledo Cited

Among the highways mentioned in connection with one of the principal applications — of Rias & Co., Kansas City—is U.S Highway 20, which skirts Toledo.

George Mingle, superintendent of the Ohio state highway patrol, testified in opposition to the applications. He said things are bad enough on the highways without the hauling of more explosives.

"We have just got such a heavy load on our roads," he testified, "that our experience in accidents, for example, in going up all the while, and even though our department is working closely with the police agencies of the state to control this situation, our experience is very bad. We are having a lot of people killed."

C. M. Buckius, deputy secretary of highways for Pennsylvania, testified this week that "our experience in Pennsylvania has shown that motor vehicle accidents involving trucks carrying high explosives have been extremely costly from the standpoint of the loss of human life and damage to property."

Area Installations Named

Attorneys for the truckers have discovered that various witnesses, appearing in opposition to their applications, aren't aware of the present extent of trucking of explosives over the highways.

Among the northwestern Ohio installations involved in present trucking of dange us explosives, according to Mr. Mingle, are the Lima Ordnance Depot, Camp Perry Ordnance, the Erie Proving Grounds, the Trojan Powder Plant at Findlay and the Allen Powder Plant north of Findlay.

Brotherhood of Maintenance of Way Employes Journal
January 1, 1952

EVERY motorist in the country should rise in wrath against the current stupid request of the truckers that they be allowed to haul unlimited quantities of war munitions on the highways. More than 60 trucking firms are now asking I. C. C. permission to endanger the lives of the motoring public through the hauling of high explosives.

Primarily for safety, munition plants are located where the danger to the public is minimized, but now the truckers want to disregard the necessary safeguard, and spread danger along the highways that are already jammed with an average of 15 vehicles per mile of road. The profit-hungry truckers see no danger in a truckload of explosives traveling down the highway at 50 or 60 miles per hour, and then crawling uphill at a snail's pace. Even a fool can see the danger to a passenger car, a school bus or other conveyance, but the truckers blinded by greed have closed their eyes.

If the I. C. C. gives permission, its members deserve bitter rebuke from the entire citizenry. It would be an appalling mistake to shift the hauling of explosives from the railroads to the highways when the railroads have performed this service for 29 consecutive years without a single fatality or injury chargeable to such transportation. To ignore such a record in considering the truckers' request would be foolhardy.

FORT WAYNE (Ind.)
NEWS-SENTINEL
December 26, 1951

Power of a Letter

The real tragedy of the tractor-trailer crash at the Wabash Railroad underpass on Broadway recently was the loss of the life of the operator who was reportedly on his "last run."

In view of the wish of trucking companies to haul explosives over public highways, it is well to consider the additional property damage which might have occurred had the trucker's cargo been explosives.

Detonated in the crash against the center pier of the structure, the explosives probably would have torn out the bridge.

This in turn would have suspended rail transport until trains could be rerouted. It would have blocked motor traffic. Such a blast would have put other lives in jeopardy.

The truckers' petition eventually will have to be acted on by the Interstate Commerce Commission.

In the meantime we are happy to acknowledge copies of protest letters to the ICC and privilege for publication on this page.

Do not underestimate the power of a well reasoned letter, readers. You wield more power for good than you realize. Here's an opportunity to use it.

A sufficient barrage of letters to the ICC will turn the tables on this menace to the public safety and well being.

WASHINGTON POST
January 11, 1952

No Bang!

Gunpowder Trailer and Truck Crash

A panel truck, loaded with apples, crashed into a tractor-trailer truck, loaded with 17 tons of black gun powder, putting the big vehicle out of commission on Route 240 at the north end of Rockville, Md., early yesterday.

The Rockville Fire Department stood by while the powder was loaded on another truck. Police said there was no danger of the powder exploding from a jolt, but that sparks could ignite it. No one was injured.

The driver of the apple truck, listed as George Anderson, 51, of Harrisburg, Pa., told police he swerved into the big truck when his left rear tire blew out. The big truck, driven by Clinton L. Pease, 43, of Alma, Mich., was damaged an estimated $1000, police said. It was the middle vehicle in a three-truck convoy...

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EXPLOSIVES

WESTERN PACIFIC
Mileposts
DECEMBER 1951

HIGHWAY "BLOCK BUSTERS"

Half the tragic record of nearly one million killed on the Nation's highways during the last half-century has been written since 1936, as motorized hazards have all but usurped the nation's roads. But, now, in spite of this record, truck operators want to risk your life still further, and have asked permission of the Federal Government to multiply road hazards by transporting munitions on the highways!

The truckers, always angling to pick and choose high-profit freight and leave low-paying bulk commodities to the railroads, see a chance to make new profits, with little regards for the safety of the 15 vehicles which on the average, occupy every mile of road. They also have another motive. Should there be a World War III they could, as munitions haulers, ask for a greater share of scarce tires and fuel.

Nearly everyone who drives a car has had the terrifying experience of being passed by one of the fast-traveling highway freights . . . forced nearly off the road and left shaken by a blast of wind. How much greater the terror if that behemoth carried the warning DANGER MUNITIONS! Tons of it!

A few months ago a truck driver hired to haul dynamite from Oakland, California, to Phoenix, Arizona, got a toothache while passing through Los Angeles. So he just parked his highway locomotive with its 10 tons load of dynamite and departed in search of a dentist. Luckily, the police noticed the truck, which also carried No. 880 electric blasting caps and after locating the driver sent him on his way.

Reports appear in the press almost daily, telling of some runaway overloaded truck with faulty brakes or other mechanical defects, crashing into lines of traffic, buildings, or overturning on the highway. Certainly, no motorist would want to collide with such a monster of death loaded with tons of high explosives.

The American Automobile Association, in its annual meeting held at Kansas City, Missouri, October 25, adopted a resolution condemning the hauling of explosives and other similar dangerous materials on the highways.

The National Sheriffs' Association, on November 12, opposed truck hauling of munitions on the highways when no national emergency exists.

The Brotherhood of Railroad Trainmen, The Brotherhood of Locomotive Engineers, The Order of Railway Conductors all have joined the railroads' protest against creation of unnecessary highway risks by allowing the trucks to haul explosives on public roads.

Perhaps you're wondering what you can do about this dangerous practice. You can inform your neighbors of this threat to your community, particularly if you are located on or near highway routes between arsenal and military establishments.

The railroads, as in the past, can most efficiently all demands of the military services for movement of munitions, and do it safely, just as they have in two world wars, over a protected right-of-way, under supervision of the Bureau of Explosives, which is maintained by the railroads and operates largely as a safety arm of the Interstate Commerce Commission.

The photo below shows the terrifying effect of a dynamite laden truck which blew up in a small mining hamlet near Greensburg, Pennsylvania. Force from the explosion ripped a hole in the ground 20 feet deep and 50 feet across, and is believed to have killed one man and sent five others persons to the hospital. Luckily, no trains were passing on the adjacent tracks at the time of the explosion. And, think what might have happened had the explosion occurred on one of our already crowded highways!

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Plaintiff's Exhibit No. 57 p. 11
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- 3197 -
EXPLOSIVE
RAILWAY AGE
Reproductions AWR Pro & Con

Chicago will not soon forget the collision between a gasoline truck and a street car in 1938 which cremated 36 street car passengers. What would have happened if the truck had been laden with explosive aviation gasoline? With munitions?

The collision between two trucks in downtown St. Joseph, Mo., in November 1949 was quite commonplace—except that the larger truck was carrying poison gas. Fortunately none of the bomb-dumping gas escaped.

"Boom Wagons" on Public Highways . . .

. . . Ignore Public Safety and Welfare to Save Pennies

A [illegible] and a criminal act does have followed the [illegible] of truckers for permanent authority to handle explosives and similar dangerous commodities, as in the so-called "Boom-age"

The readers to the report [illegible] the case of the Department of Defense [illegible] of storage railroads as the sole supporter of the truckers appearance. Witnesses for the department label the trucking of

In the face of all the opposition, surprisingly little has been said about the large volumes of munitions moving by truck and how truckers are doing it.

The Department of Defense sticks to a policy of buying munitions transport solely on *price*. Truckers, quick to see an advantage, have Washington representatives who swarm around Defense Department officials in quest of this business. These representatives bid on attractive movements not all movements—at a rate approximately 1 cent per 100 lb. under published railroad rates. The railroads, bound as they are by tariff and I.C.C. requirements, cannot quote prices under their published tariff rates, so the truckers naturally are the low bidders. On that basis the savings to the Department of Defense on a 10-ton shipment of explosives amounts to only $20. Yet this shipment, divided among several trucks, could reach destinations in one or more large cities.

As the result of this situation experienced observers

Background Material

[illegible] conditions of public convenience and necessity to be [illegible] throughout the country, the Interstate Commerce Commission often has withheld authority to transport dangerous commodities such as dynamite, munitions, poison gas, aviation gasoline, and the like, partly because of the inherent dangers in moving such products over public streets and highways, and partly because many truckers just were not interested in that kind of business. Some trucking concerns, however, including the wide-ranging Pacific Intermountain Express, have obtained unrestricted permanent rights to transport munitions and other dangerous commodities at will over any of their routes.

Records show 60 truckers operating in the vicinity of ammunition depots and ordnance works have petitioned the I.C.C. to lift permanently the restrictions on their certificates, thus permitting them to handle munitions and similar dangerous commodities. These 60-odd cases have been grouped together, with much of the evidence consolidated and presented in hearings on the application of Ross & [illegible], the Mt. Dora Sash Mill proceeding commonly known as "the Ross case."

Munitions and similar dangerous commodities traditionally have moved by rail for all but local hauls. But the Department of Defense, long an advocate of strong railroads, has recently come up with an idea for "complete motor and rail service" so it can "shop" for the lowest price. The truckers, of course, are delighted and have been carrying on ads to create more of the business.

During World War II all the railroads transported practically all munitions and similar dangerous shipments. Even so, there were cases where, for one reason or another, truck movement was considered essential. In those cases the necessary temporary permit was obtained in a matter of hours, sometimes minutes.

The fact that the majority of common and contract truckers did not have permanent authority to move munitions during the last war neither worked harm nor retarded essential movements. On the other hand, the temporary permit system diverted local policing agencies to the imminent movement of dangerous commodities over specific routes, thereby enabling them to take precautionary measures.

Railroad movement of munitions and all other dangerous articles is now and always has been under constant and rigid control. There is no comparable policing of highway movements.

The key to the railroad system of supervision is the Association of American Railroads' Bureau of Explosives, which has, over a long period of years, studied and developed safe, efficient methods of packing and transporting explosives and other dangerous commodities. These are embodied in specifications and regulations which are closely followed and enforced by the individual railroads. That they are enforced rapidly and consistently is demonstrated by the railroads' safety record in war and peace.

By contrast, the policing of highway movements is, in actual practice, almost non-existent. No effective method has yet been found for policing such highway movements, other than by [illegible] police agencies. The Interstate Commerce Commission has endeavored to cope with the problem through the safety section of its Bureau of Motor Carriers. But even before congressional cuts started trimming the I.C.C.'s annual appropriation, the safety division had only 25 men handling enforcement for the entire country. Hence, necessarily, coverage was pretty thin.

The railroads provide their own protective services—at their own expense.

It is standard railroad practice to isolate all explosive and similarly dangerous commodities in a separate, carefully labeled railroad car, regardless of the size of the shipment. In direct contrast, truckers can—and frequently do—mix dangerous articles with general cargo and handle them together in a single truck.

With the multitude of optional rail routes available, the railroads always endeavor to move large shipments of explosives over lines which avoid congested population and industrial centers. The railroads likewise have very rigid regulations concerning places where cars containing explosives may be "parked" and concerning constant guard for such "parked" [illegible]

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EXPLOSIVES

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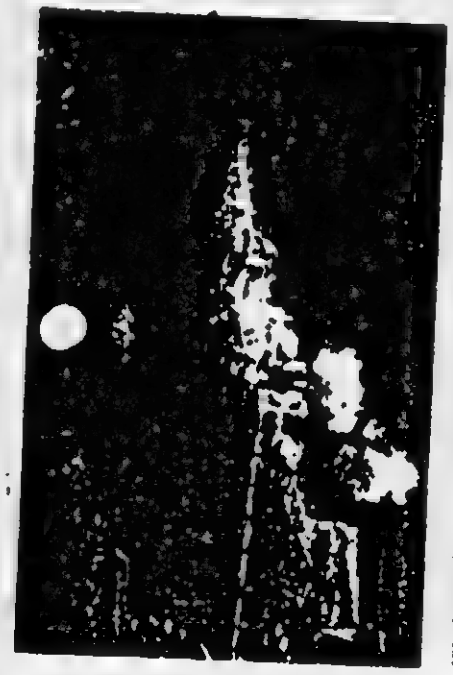
THE SANTA FE MAGAZINE DECEMBER, 1951

Munitions and Motor Cars Won't Mix!



In All Probability This Tractor-Trailer Rig Would Have Been Struck by a Freight Train Before the Driver Could Have Seen the Danger Signals

Brotherhood of Railroad Trainmen and the Railway Conductors.

Intervention by the AAA and the unions followed by counsel for Rice & Co., Kansas City, Mo., spearhead of the truckers' fight, was told the record revealed numerous of truck crashes into trains and train crashes into trucks and that munitions-laden highway freighters

Highway traffic fatalities would be one of the worst hazards faced by a munitions load—and the railroads would be just as big a threat to the carelessness of highway motor-driven themselves.

Carelessness of motorists at railroad crossings is the most probable cause of train accidents. Last year 3,000 persons were killed in such accidents and 12,000 were injured. Half the traffic records in the last half-century has been written by motorists who have all but ignored the nation's railroads in keeping with their policy of seeking only the most profitable traffic, the big truckers

defense against N-bombing were a truck in the highway.

Munitions drivers usually are hired at higher wages than other truckers because they are paid in such a manner as to minimize the danger to the public. Why, then, put explosives on the highways on smaller, less safe trucks than those who ride or have places of business by the roadside?

The safety in which munitions are carried by the railroads is proved by the record. In 1941 the railroads hauled 15,000,000 tons of explosives and during all the years of World War II there were only three relatively minor accidents involving such loads, none of which took a life.

But the safety picture would change overnight if fast-rolling motor giants ever began hauling munitions up and down the nation's roads. The AAA calls the proposed munitions traffic a "great hazard" to highway users and Charles M. Hoyer, president of the Chicago Motor Club, has warned the ICC that a 75,000-pound explosive truck load of munitions could blow up a large city.

As long ago as 1935, the National Fire Protection Association sounded warning that life and property on the highways were being needlessly threatened by the growing movement of "highly flammable liquids and other dangerous materials" and that such traffic be prohibited near homes, hospitals, theaters, public assemblies, schools and churches.

Certainly, there has since been no change for the better. Today's traffic is far heavier and moves much faster than it did 15 years ago. As highway speeds have risen, the number of cars on the road has multiplied to a total of more than 40,000,000. In 1950 in highways. And in the same span of years there has been a rapid growth in the number

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from the orig

of roadside business places with dark names all completely cutoff every road in crowded by stops, service stations and homes, all of which would be in danger with the passage of every munitions truck.

Just to illustrate, a recent check along the 46 miles of U. S. Highway No. 1 between Baltimore and Washington revealed 618 roadside stores and 645 other structures, all of which are exposed to the danger of being blown sky-high if a munitions truck had an accident while passing.

Anyone who has ever driven on the highway has had this terrifying experience. A fast-moving highway boxcar comes up from the rear, blasts its air-horn and rushes past. The smaller passenger car often is forced to swerve out of the way onto the shoulder of the road and the driver left shaken by the thought of what could have happened to him and those with him.

How much more terrifying if that behemoth carried alarm proclaiming: DANGER—MUNITIONS! Perhaps 50 or 60 tons of it!

Munitions trucks probably would travel just as fast as other road hunters. No secret is made of the 50, 60 and 70-mile-an-hour speeds at which intercity freighters race from town to town.

Drivers of munitions trucks could not be expected to go any slower than other traffic; they would be a road hazard if they did since fast-moving vehicles would take risks to pass.

The contemplated movement of munitions in large volume by truck would be completely without the experience in handling and policing this is assured the transportation of munitions when moved by railroad. The railroads' own Bureau of Explosives supervises such shipments and operates much as if it were an arm of the Government itself. There are no similar safeguards for the transportation of munitions over the highways.

And from the record, it appears that the trucking industry cannot or will not police itself for safety when quick dollars are in sight.

The Hudson River Railroad Tunnel explosion and fire in May 1946, proved that. The rail and truck Tunnel that caused the cargo of a chemical train loaded with 40 tons the load [illegible]. But a few weeks later, when tunnel traffic had been [illegible] a hundred violations of the earlier accident.

Each day brings [illegible] volving a [illegible] oil tankers. One [illegible] deaths was the crash [illegible] streetcar that burned [illegible] did property damage [illegible] The resulting fire [illegible] bike and eight [illegible] fire of the building [illegible]

Omaha, Neb., [illegible] two tanker crashes [illegible] driver died when [illegible] and burned; in the [illegible] when a tanker [illegible] school children died [illegible]

Sometimes disaster [illegible] margin, as in Los [illegible] to haul dynamite [illegible] Oakland, Cal., to [illegible] ache in Los Angeles [illegible] rig and went to [illegible] police saw the [illegible] went looking for [illegible] on his way.

Investigation also [illegible] major factor in truck accidents, ranking right along with vehicle overloading in defiance of weight laws. The Illinois [illegible] Division of Motor Carriers has reported that more than half the 360,000 highway motor carriers examined every six months have some defect, usually in the brake.

Loss of brake power on a munitions truck about to pass a [illegible] disaster. And suppose that the truck was a school or passenger bus? [illegible]

School and passenger buses today are an important part of road traffic and putting hundreds of [illegible] the same highways with [illegible] be tolerated.

There is no reason, except the profit motive, for truckers to seek to haul munitions on the highways. The railroads can continue efficiently to move most every demand of the Government for movement of explosives. And it can be done by the railroads without undue [illegible] and property.

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MISSOURI PACIFIC LINES MAGAZINE - November, 1951

MUNITIONS and MOTOR CARS JUST WON'T MIX

TRUCK operators want to risk your life to make new profits hauling munitions on the public highways. They are asking permission of the Federal Government to bring new and greater danger to busy and overcrowded highways where 20,000 Americans die every year in accidents.

Half the tragic record of nearly 1,000,000 dead in the last half-century has been written since 1936 as motorized boxcars have all but usurped the nation's roads.

In keeping with their policy of seeking only the most profitable traffic, the big truckers have asked the Interstate Commerce Commission to ignore the munitions-hauling safety record of the railroads and give the highway freighters permission to haul explosives on the public highways which already are jammed with an average of 15 vehicles on every mile of road.

The applications of more than 60 trucking firms to the ICC for munitions-hauling authority have been opposed by the railroads, which have been joined in the fight for safety by the American Automobile Association, the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Trainmen and the Order of Railway Conductors.

Intervention by the AAA and the unions was attacked by counsel for Riss & Co., Kansas City, Mo., spearhead of the truckers' fight, but the ICC was told the record revealed many instances of truck crashes into trains that injured or killed engine and train crews and that munitions-laden highway freighters would multiply that danger.

By requesting the ICC to authorize truck movement of munitions, the truckers are asking the Government to halt at the gate all the safety precautions imposed by the Army and Navy at arsenals, powder factories or munitions depots. What kind of safety control can there be over a truckload of explosives hurtling down the highway at 50, 60 or 70 miles an hour? The truck, once it departs from a government arsenal, is on its own until it gets to its destination.

Highway traffic itself would be one of the major hazards faced by a munitions load. Other vehicles would be just as big a threat to explosive cargoes as the carelessness of munitions truck drivers themselves.

The safety in which munitions are carried by the railroads is proven by the

(Continued on Page 46)

FORTUNATELY no one was hurt—but windows for blocks around were shattered when this truck, loaded with acetylene and oxygen, exploded with a burst like an atomic bomb. This happened at Austin. (AP Wirephoto)

A TRUCK, loaded with 8250 gallons of gasoline wrecked an automobile showroom at Lake Charles (left), while at Albany, N. Y., (right) firemen battling a fire caused by gasoline truck crashing into a switch engine, were blown out of their clothing.

(Acme, left, and Wide World, right.)

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MUNITIONS and MOTOR CARS

(Continued from Page 10)

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Today's traffic is far heavier and moves much faster than it did 15 years ago. As highway speeds have risen, the number of cars on the road have multiplied to a total of more than 40,000,000 in 1950. In 1935 there were 22,500,000 cars on America's highways. And in the same span of years there has been a rapid growth in the number of roadside business places with their numerous employes, until every road is crowded today by stores, service stations and homes, all of which would be in danger with the passage of every munitions truck.

To illustrate, a recent check along the 40 miles of U. S. Highway No. 1 between Baltimore and Washington revealed 618 roadside stores and 665 other structures, all of which are exposed to the danger of being blown sky-high if a munitions truck had an accident while passing.

Anyone who has ever driven on the highway has had this terrifying experience. A fast-moving highway boxcar comes up from the rear, blasts its airhorn and rushes past. The smaller passenger car often is forced to swerve out of the way onto the shoulder of the road and the driver left shaken by the thought of what could have happened to him and those with him.

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And from the record, it appears that the trucking industry cannot or will not police itself for safety when quick dollars are in sight.

The Hudson River Holland tunnel explosion and fire in May, 1949, proved that. The Holland tunnel blast erased the cargo of a chemical truck loaded with 48 times the legal volume. But a few weeks later, when tunnel traffic had been resumed, a spot check found a hundred violations of trucking laws, in spite of the earlier accident.

Each day brings its own tale of disaster involving a linehaul highway giant, particularly oil tankers. One of the worst of these accidents was the crash of a tanker and Chicago streetcar that burned alive 34 passengers and did property damage estimated at $150,000. The resulting fire engulfed several automobiles and eight nearby buildings, destroying five of the buildings.

Omaha, last spring was the scene of two tanker crashes in a week. In one the driver died when his truck struck a building and burned; in the other, tragedy was averted when a tanker that struck a streetcar full of school children did not explode or burn.

Sometimes disaster is missed by a scant margin, as in Los Angeles when a driver hired to haul dynamite and detonating caps from Oakland, Cal., to Phoenix, Ariz., got a toothache in Los Angeles. So, he just parked his rig and went to find a dentist. Fortunately, police saw the truck, investigated and then went looking for the driver who was hurried on his way.

Investigation shows faulty brakes to be a major factor in truck accidents, ranking right along with vehicle overloading in defiance of weight laws. The Illinois State Division of Motor Carriers has reported that more than half the 360,000 highway motor carriers examined every six months have some defect, usually in the brakes.

Loss of brake power on a munitions truck headed downhill would almost certainly mean disaster. And suppose that the truck was about to pass a school or passenger bus?

School and passenger buses today are an important part of road traffic and

"THAT WAS NOT THE SPIKE YOU HIT!"

putting hundreds of fast, huge munitions trucks on the same highways with these buses is not to be tolerated.

The railroads can continue efficiently to meet every demand of the Government for movement of explosives. And it can be done by the railroads without endangering life and property.

NEW MEXICO PRESS (Clovis) N.M.
November 15, 1951

Explosives On Public Highways

Fatalities in New Mexico are horrifyingly frequent. There are always some road hazards in existence, due to weather conditions, reconstruction, and occasional sharp turns, but to deliberately add another and greater hazard to the traveling public, is unthinkable.

A press release by the Association of Western Railways notes that:

"Trucking companies seeking federal authority to transport dangerous explosives on the highways propose to move cargoes that can be exploded by fire, collision impact, friction, sparks, or even electrical discharges, testimony of an explosives expert disclosed today.

"The greatest threat to explosives and munitions hauled in trucks would come from the possibility of fire, Dr. Melvin A. Cook of the University of Utah said, in testimony before the Interstate Commerce Commission hearing on the application of more than 50 highway freighting companies seeking authority to haul dangerous explosives over the public highways. Dr. Cook was called as a witness by the American Automobile Association, which is opposing the applications.

"Noting that 'the simplest and surest way to produce an explosion in any explosive substance is, of course, by the intentional use of a detonator,' the witness pointed out that shipment of explosives in trucks from this viewpoint would present many opportunities for sabotage."

"Time bombs and fuses are simple and easy to use and protection against their use in connection with the trucking of explosives would be extremely difficult,' he added.

'Furthermore, truck transportation of explosives always faces the serious threat of explosion should gasoline be set afire, he said.

"The situation common to truck tractors, in which the gas tanks and explosive cargo are in very close proximity, provides an added and serious explosion hazard especially whenever the truck is involved in a wreck, for even if the cargo does not explode by impact, or shock, or friction, the hazard remains that a fire will break out in the gasoline and thereby involve the explosive cargo, Cook added."

The railroads are, of course, competing with truck transporting companies, but the railroads operate on their own private property. The principal hazard they offer to operators is where tracks cross the highways, and at these intersections, adequate signs furnish sufficient warning.

Possibilities being so obvious, we cannot welcome the idea of huge trucks loaded with explosives, rumbling up and down our

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HIGHWAY TRANSPORT

NORTH WESTERN NEWSLINER NOVEMBER, 1941

Danger Is Rolling On Rubber Tires

MOTOR CARS AND MUNITIONS WON'T MIX

At The Risk Of Your Life, Truckers Are Looking Toward New Profits In Hauling Explosives

TRUCK operators want to risk your life to make new profits hauling munitions on the public highways. They are asking permission of the Federal Government to bring new and greater danger to busy and over-crowded highways where 39,000 Americans die every year in accidents.

Half the tragic record of nearly 1,000,000 dead in the last half-century has been written since 1936 as motor-load boxcars have all but usurped the nation's roads.

In keeping with their policy of seeking only the most profitable traffic, the big truckers have asked the Interstate Commerce Commission to ignore the munitions-hauling safety record of the railroads and give the highway freighters permission to haul explosives on the public highways which already are jammed with an average of 15 vehicles on every mile of road.

The applications of more than 60 trucking firms to the ICC for munitions-hauling authority have been opposed by the railroads, which have been joined in the fight for safety by the American Automobile Association, the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Trainmen and the Order of Railway Conductors.

Intervention by the AAA and the unions was attacked by counsel for Rice & Co., Kansas City, Mo., spearhead of the truckers' fight, but the ICC was told the record revealed many instances of truck trashes into trains that injured or killed engine and train crews and that munitions-laden highway freighters would multiply that danger.

By requesting the ICC to authorize truck movement of munitions, the truckers are asking the Government to halt at the gate all the safety precautions imposed by the Army and Navy at arsenals, powder factories or munitions depots. What kind of safety control can there be over a truckload of explosives hurtling down the highway at 50, 60 or 70 miles an hour? The big highway truck, once it departs from a government arsenal, is on its own until it gets to its destination.

Highway traffic itself would be one of the major hazards faced by a munitions load. Other vehicles would be just as big a threat to explosive cargoes as the carriageroom of munitions truck drivers themselves.

A crash into a highway boxcar loaded with grain, foodstuffs or merchandise might possibly result in broken bones. A crash into a munitions truck would almost certainly end in explosion, fire and sudden death!

But even the observance of every driving rule of safety and speed would be no guarantee of the safe arrival of munitions at their destination. Communist sympathizers and saboteurs could be expected to see their opportunity to get driving jobs and then seize a load or several loads of munitions and use them to damage America's war industry.

Careful screening of applicant drivers might reduce this peril but it would be small defense against hi-jacking once a truck hit the highway.

The safety in which munitions are carried by the railroads is proven by the record. In 1944 the railroads hauled 12,000,000 tons of explosives and during all the years of World War II there were only three railroad accidents involving such loads, none of which took a life.

But the safety pictures would change completely if fast-rolling motor giants ever began hauling munitions up and down the nation's roads. The AAA calls the proposed munitions traffic a "great hazard" to highway users. Charles M. Hayes, president of the Chicago Motor Club, has warned the ICC that a 72,000-pound (36-ton) truckload of munitions could blow up a large city.

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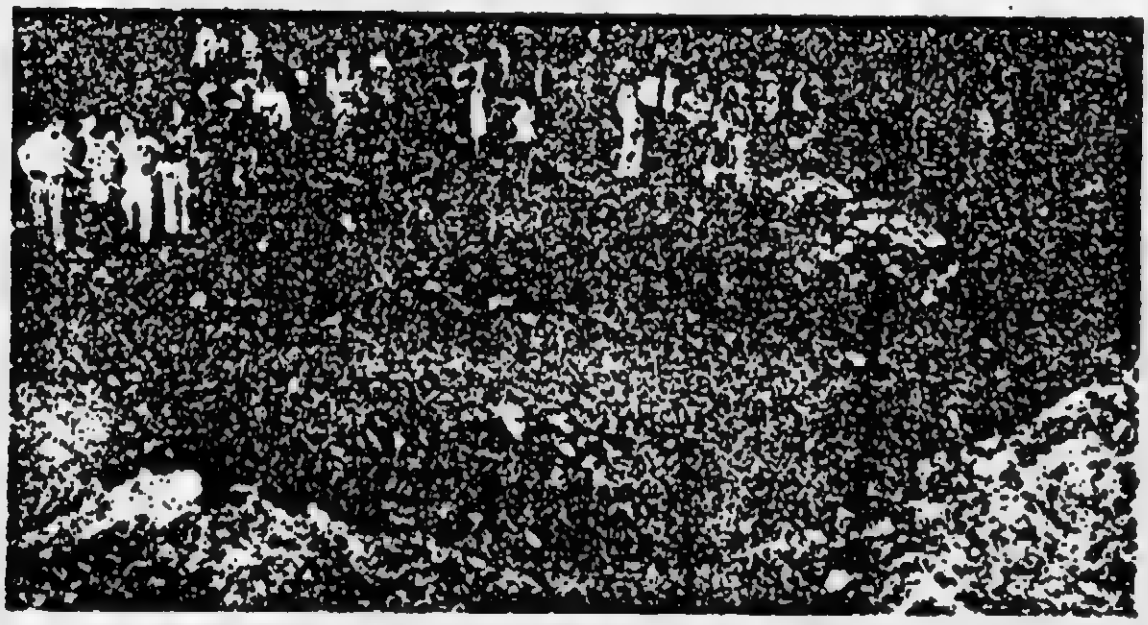
Certainly, there has since been no change for the better. Today's traffic is far heavier and moves much faster than it did 15 years ago. As highway speeds have risen, the number of cars

OVER



Almost a mile-and-a-half long, a truck loaded with 400 cases of dynamite caught fire and exploded on U.S. Highway 41-A, 20 miles north of Nashville, Tenn. The blast left this hole—75 feet deep, 75 feet long and 30 feet wide—in a heavily traveled highway. Tragically, two persons were killed. If trucks regularly carried munitions cannon like this could well become commonplace.

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on the road has multiplied to a total of more than 40,000,000 in 1950. In 1905 there were 22,500,000 cars on America's highways. And in the same span of years there has been a rapid growth in the number of roadside business places with their numerous employees, until every road is crowded today by stores, service stations and homes, all of which would be in danger with the passage of every munitions truck.

Anyone who has ever driven on the highway has had the terrifying experience of a fast-moving highway hotrod coming up from the rear, blasting its air-horn and rushing past. The smaller passenger car often is forced to swerve out of the way onto the shoulder of the road and the driver left shaken by the thought of what could have happened to him and those with him.

How much more terrifying if that behemoth carried signs proclaiming: DANGER—MUNITIONS! Perhaps 50 or 60 tons of it!

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Investigation shows faulty brakes to be a major factor in truck accidents ranking right along with vehicle overloading in defiance of weight laws. The Illinois State Division of Motor Carriers has reported that more than half the 160,000 highway motor carriers examined every six months have some defect, usually in the brakes

Loss of brake power on a munitions truck headed downhill would almost certainly mean disaster.

School and passenger buses today are an important part of road traffic and putting hundreds of fast, huge munitions trucks on the same highways with those buses can not be tolerated.

There is no reason, except the profit motive, for truckers to seek to haul munitions on the highways. The railroads can continue efficiently to meet every demand of the Government for movement of explosives. And it can be done by the railroads without endangering life and property.

Excessive overloading and high speed combined to cause a tire on this truck to catch fire igniting this truck's 14 tons of butter. If this truck had been loaded with high explosive shells, instead of butter, death and destruction would have roared on the area. Truckers well-known disregard of loading and speed regulations make them a poor risk to haul munitions.—Photo from Wide World

Faulty Brakes Caused These Two Crashes . . . What If Loads Had Been Munitions?

These shows suffered damage of $20,000 and three persons were injured when this truck loaded with 20 tons of potatoes went out of control in Stockton Springs, Me. The driver said his brakes locked. An equal load of munitions would have virtually demolished the town.

There were 2,600,000 crashes involving big trucks last year. One of the most destructive was this one in California. Brakes of this 20-ton monster didn't hold. Result: six autos, a cafe, bar, poolroom and service station were smashed. Two were killed.—Photo from AP.

3-1/2

BEST CO
from the or

New York Central Headlight November, 1951

Photo By Arms

FIRE AND DEATH on the road: this is what happened when a truck loaded with oil crashed into a car (left) in Ellerton, O. Flaming oil spray ignited nearby house which burned to ground in 20 minutes. Truck driver and two car passengers were killed.

Danger—Explosives!

Truck operators are asking permission of the federal government to bring new and greater danger to busy, overcrowded highways where 20,000 Americans meet accidental deaths every year.

Half the tragic record of nearly a million fatalities in the last 50 years has been written since 1936 as motorized boxcars have all but taken over the country's roads.

The big truckers have asked the Interstate Commerce Commission to ignore the munitions-hauling safety record of the railroads and give highway freighters authority to haul explosives on public highways already jammed with vehicles.

Applications of more than 60 over-the-road truck operators are before the I.C.C. for this purpose. Opposition to the applications has been registered by the Brotherhood of Locomotive Engineers, the Brotherhood of Railroad Trainmen, the Order of Railway Conductors the American Automobile Association, governors of several states and the Association of American Railroads.

There is no need to expose public highways to added dangers by hauling large quantities of munitions over them. A time-tested system of transportation for explosives already exists, based on sound safety principles, strictly policed and flexible enough to meet any emergency.

Explosives now are hauled by rail under exacting supervision by the Bureau of Explosives, maintained through the Association of American Railroads and operated largely as a safety agency of the I.C.C. itself.

The railroads have the great advantage of protected, non-public rights-of-way over which such traffic can be handled. Granting the requested authority to truckers would turn loose upon the highways thousands of tons of speeding destruction. The A.A.A. has pointed out to the Commission that a single 36-ton truck loaded with munitions is capable of destroying a fair-sized town.

Trucks hurtling along the road are subject only to the control of their drivers. The long record of weight limit violations and disregard for speed restrictions would indicate that a large percentage of over-the-road truckers are not very diligent when it comes to self-policing."

Most auto drivers have had the terrifying experience of a fast-moving highway boxcar coming up from the rear, blasting its air horn and rushing past. The smaller passenger car often is forced to swerve onto the road shoulder with the driver left shaken by the thought of what might have happened. How much more terrifying if the giant truck carried signs proclaiming: DANGER—MUNITIONS! Perhaps 30 or 40 tons of it!

During World War II America's railroads chalked up new records for safely transporting munitions. In 1944 alone, the railroads hauled 15 million tons of explosives for the armed services. During all the war years only three accidents occurred involving munitions trains. None of them resulted in a fatality. Even with the Korean war calling for supplies from our war industries, in 1950 only 1½ million tons were carried. Plainly, only a minor part of the railroads' capacity for handling munitions traffic is being utilized.

Today's highway traffic is far heavier and much faster than it was 15 years ago. In the last decade, as highway speeds have risen, the number of cars and trucks on the roads has more than doubled. In 1950, 50,000,000 motor vehicles were registered in the United States.

With the available railroad capacity for transporting munitions and the choked condition of our highways, the truckers have no sound reason for seeking this business. They are demonstrating their disregard of public safety by trying to place on the roads huge and dangerous loads which would jeopardize roadside homes and businesses, private cars and buses. Suppose, for example, a road freighter's brakes failed as it approached a school bus at 60 miles an hour! The possibility of such disaster must not be tolerated.

America's railroads have shown their ability and capacity for handling munitions traffic safely and efficiently. Consideration of the public interest must come first, and such consideration does not warrant adding dangerous explosives to an already impressive list of traffic hazards.

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Reproductions — Pro & Con — AWR

The Milwaukee Road Magazine November, 1951

EXPLOSIVES by highway?

The attempt on the part of 48 trucking firms to gain authority from the Interstate Commerce Commission for the hauling of munitions and other dangerous articles over the public highways is causing grave concern on every hand as people contemplate the threat to life and property. Among the groups opposing the proposed move are the American Automobile Association and some of the railroad brotherhoods. In its issue of Oct. 8, Train [illegible] News, official publication of the Br[illegible]erhood of Railroad Trainmen, published an editorial entitled "Death-Dealing Trucks" which summarized the case particularly well. It is reprinted here through the courtesy of that publication; the reference to the above picture is our own, however, as this picture has been substituted for a similar one which appeared in Trainmen News.

—Editor.

KEEP dynamite-laden, death-dealing trucks off the nation's highways!

What better argument for that action could be given than the visual proof of the extreme danger involved which is shown in the picture above

A truck loaded with dynamite blew up in a mining hamlet near Greensboro, Pa., on Nov. 14, 1950, ripping a hole in the ground 20 feet deep and 50 feet across, and damaging a nearby rail line.

The blast is believed to have killed one man. Five other persons were hospitalized. It could have been a terrible tragedy—and they are certain to happen if trucks are permitted to move munitions over the highways.

A movement now under way by the trucking industry to win Interstate Commerce Commission approval to carry high explosives on the public highways has run into full-fledged opposition of the BRT, which is supported by other rail labor unions and organizations quick to spot the terrible danger involved.

Brotherhood members and other railroaders know only too well what has happened when trains have collided with trucks transporting gasoline. We shudder to think of the outcome of a collision with a highway boxcar loaded with munitions.

And is there any reason why trucks should get into the transportation of munitions, subjecting railroaders and the general public to an unnecessary danger?

Absolutely not. The nation's railroads are well able to haul explosives with the least amount of danger involved. You have only to check the record of the railroads during World War II and the Korean conflict to see why.

In moving thousands of carloads of explosives from munition plants to storage points and to ports for overseas shipments, the nation's railroads had only three accidents during the five years of World War II.

And there was no loss of lives.

The real reason for this outstanding record is that the railroads enforce stiff regulations for the safe handling of explosives.

No, there are no grounds for turning over the job of moving munitions to the trucks and the ICC should act accordingly as the trucking ind[illegible] presses its campaign to win a favorable nod.

The railroads, as in the past, are ready and able to meet every demand of the military services for the movement of munitions.

They can do the job, too, without endangering the lives of hundreds of persons every minute of the day and night.

The driver of a double trailer carrying 7,000 gallons of butane perished in his cab after a broadside crash into a school bus. The bus driver, en route to pick up his first load of school children, leaped from the flaming wreckage in time. Our highways are dangerous now. Explosive-laden trucks would multiply that danger. (Acme telephoto)

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[Sent to Editors of Railway Labor Magazines
List No. 41 (with letter)
HAY Ex. 26 WARE Mail Prepared

Plaintiff's Exhibit 58
Page One
Hays Ex. 26 (Sd.) (B)

The Interstate Commerce Commission, beseiged by upwards of 60 trucking companies for permanent authority to haul dangerous explosives over the nation's highways, resumed hearings on the applications in Washington, January 8.

Mounting public resentment against the hazards of trucking large quantities of explosives and ammunition over the highways have prolonged the hearings, which began September 17, in Chicago, and which originally were expected to be completed in five or six weeks. Several more weeks of testimony now are anticipated.

Protesting witnesses - including spokesmen for railroad labor - from coast-to-coast and from the gulf to Canada -- from all parts of the nation -- have testified that truck loads of explosives on the highways constitute an unncessary hazard.

Representatives of the American Automobile Association, the executive committee of the Governor's Conference, as spokesman for the governors of the various states, the Congress of Parents and Teachers, state highway officials, ranking officers of state police patrols, the National Sheriff's Association, the International Association of Chiefs of Police, numerous municipalities, state legislatures, shippers and others, appeared to testify before ICC Examiner B. E. Stillwell, all urging the Commission to deny the applications.

Witnesses opposing the applications in behalf of railroad labor unions emphasized their interest in promoting the safety of their members and the general safety of the public.

Guy L. Brown, first assistant Grand Chief Engineer of the Brotherhood of Locomotive Engineers, told the ICC that in his opinion motor truck

transportation of explosives "creates substantial hazards to locomotive engineers and other train employees" as well as to the trains themselves, those riding the trucks and those who might be in the vicinity of any explosion.

Speaking for the Order of Railway Conductors, W. D. Johnson, union vice-president and national legislative representative, expressed concern for "both the safety and general welfare of railroad employees and the public" and said his group took the position "that dangerous explosives are commodities which are too hazardous to be moved over the public streets and highways."

Furthermore, Johnson stated, since experience shows it is almost impossible to prevent collisions at crossings "there would be great possibility of collisions at grade crossings between trains and trucks loaded with explosives."

Johnson also held that truck movement of explosives would deprive the railroads "of revenues to which they are justly entitled."

Martin H. Miller, director of the legislative department of the Brotherhood of Railroad Trainmen, in opposing the applications said that the BRT was fearful that if such applications were granted "the disregard for human safety and welfare will increase proportionately with the increase in the number of trucks hauling dangerous explosives."

Miller said the Trainmen's union opposed the applications in the interest of safety for its members, both as employees of railroads and bus lines, and as citizens and property owners.

A munitions expert warned that truck-hauled explosives faced their greatest threat in the possibility of fire. Truck-hauled explosives also would be highly vulnerable to sabotage, he added.

Dr. Melvin A. Cook, professor of mettalurgy at the University of Utah, formerly was a research chemist in explosives for E. I. du Pont de Nemours & Co., Inc.

Dr. Cook warned, too, that "an explosion of 20,000 pounds of explosives" could destroy or render temporarily useless "any bridge in the country, including such bridges as those across the Missouri, Missippi and Ohio Rivers."

Shippers opposing the applications fear that if the railroads continue to lose high-rated traffic, such as explosives, they will be forced to raise freight rates on commodities that still move by rail.

Furthermore, trucks can only perform "possibly faster, but not better" than the railroads, according to J. Earl Bryan, general traffic manager of the Wisconsin Paper & Pulp Manufacturers, Chicago, who told the Commission trucks "cannot perform a better service than the railroads."

Spokesman for another shipper, T. C. Burwell, vice-president of the A. E. Staley Manufacturing Co., Decatur, Ill., called the railroads the "backbone of our national transportation system" and said that "without questions, the financial plight today of the rail carriers is due to the diversion of traffic from rail carriers to other modes of transportation."

R. D. Waller, traffic manager of the Farley Electric Manufacturing Co., Dubuque, and a stockholder in Farley-Loetscher Manufacturing Company, said he and those he represented "have great apprehension over the loss of railroad tonnage, for fear that in the end, if it continues, they will be called upon to pay higher freight rates in order to sustain the railroads."

The Executive Committee of the Governor's Conference recommended

that "no mass grant of permits for permanent authority to transport explosives by motor carriers should be given by the Interstate Commerce Commission." In event of a national emergency, the committee recommended that "where it is shown conclusively that the national defense effort requires the transport of explosives by motor carriers, the Interstate Commerce Commission should grant temporary permits on an individual basis."

Railroad operating witnesses testified that the carriers are in a position to provide fast and efficient transportation for explosives and munitions. They produced records showing that the rail carriers handled virtually all munitions moved during World War II without loss of a single life while shipments were being moved by rail.

E. V. Hill, chairman of the Freight Traffic Committee of the Central Territory Railroads, Chicago, said that at no time in the past three years or more has any government representative at a meeting of chief traffic officers of Class I railroads complained "of the service being rendered by the railroads."

Hill said that World War II established the "adequacy of rail transportation in the movement of munitions and explosives." During the war, furthermore, the movement of such cargoes utilized railroad facilities "to a degree far in excess of the present defense program."

Operating men from railroads throughout the country testified along similar lines, showing the manner in which the railroads had responded to World War II demands and the present availability of rail equipment to meet any new defense requirements.

Various non-railroad witnesses emphasized that truck transportation of munitions and other explosives would be a constant threat to the safety of the

public, particularly shcool children travelling by buses.

Witnesses asserted frequently that local roads already were inadequate for today's traffic and that injection of explosives-laden trucks would complicate an already hazardous situation.

H. D. Booth of Benton, Ark., director of traffic and safety for the Arkansas State Highway Commission, opposed the applications for munitions hauling permits on behalf of Gov. Sid McMath.

Booth called Arkansas' highway system "woefully inadequate" and said the State highway system contains "more lineal feet of bridge structures per mile" than can be found in any other state - 508,880 feet, or about 95 miles.

Booth asserted that today's military need "does not warrant the extension of permanent rights to engage in the business of transporting dangerous explosives over the highways of Arkansas."

"We strongly object to explosives being hauled anywhere and everywhere over our highways," he declared.

California State Senator Randolph Collier, chairman of the joint fact-finding committee of the California legislature on Highways, Streets and Bridges, said the commission "unalterably opposed" granting "anything on high explosives" in California.

Director of Public Works James R. Palmer of Rock Island, Ill. said the driver of any truck, no matter how careful, "has no control over whether or not he may be involved in an accident" and that introduction of additional explosives-laden vehicles on the streets "will create not only a rather difficult situation for the city to handle, but also introduce the psychological effect which might increase the hazard manifold over what it is at the present time."

Traffic accidents are rising he said, and explosives trucks would increase the rate of gain in accidents.

Capt. Frank Reiser of the St. Joseph, Mo., police department, recounted the high indignation of townspeople in November, 1949, when a convoy of poison gas was routed through their town by the Army.

One of the 15 trucks was involved in a collision. Public criticism of the police was immediate, Reiser said, adding that because of traffic conditions "it is not safe" to move such dangerous cargoes in St. Joseph.

Walter R. Scott, executive vice-president and traffic commissioner of the Kansas City Board of Trade, opposed "any proposition of this kind which seeks to take business, high-class business, off the railroads, and makes it necessary for them to look to our business and other businesses, to make up a fair return on their operation."

He admitted under cross-questioning that "in a small way" demand for high-grade box cars for munitions movement might be the cause of a shortage of cars for grain. Asked if he opposed that, he replied:

"No, I would let them handle more explosives and make more money to buy more box cars. That is what I would do."

Two Oklahoma City residents, Lloyd Palmer, Manager of the Oklahoma Safety Council, and Mrs. W. S. Jerkins, state treasurer, and member of the executive board of the Oklahoma Congress of Parents and Teachers, voiced Oklahoma opposition to the applications.

Palmer said he was protesting because he believed hauling munitions and other explosives in trucks would place "in jeopardy" the safety of Oklahoma residents. He declared that "too many variables" that cannot be controlled are present in truck movement of explosives.

Questioned as to her knowledge of explosives, Mrs. Jerkins retorted that "dangerous explosives, I presume, are dangerous explosives. I have noted that unloaded guns are always the ones that kill the children. Even firecrackers that are safe have caused the loss of eyes and limbs to many school children. Therefore, when it says dangerous explosives, I figure they are dangerous."

"My purpose," she declared, "is to oppose the transportation of dangerous explosives for the sake of our boys and girls on the highways of Oklahoma."

Mrs. Jerkins testified that 4,500 schools in the state house 464,754 children and that 3,150 state-operated school buses carry two-thirds of the state's school-age children every day.

"A collision between a school bus and another vehicle where there is no fire or explosion is horrible enough, but a collision between a school bus and a truck loaded with dangerous explosives might well result in a catastrophe."

Plaintiff's Exhibit 59
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COPY

TO: Reyn Girdler

March 6, 1952

FROM: Dick Strouse

RE: C. B. &. A. AND ICC EXPLOSIVES HEARINGS (history as per request)

On January 22, Wight wrote Girdler outlining "a course of action which I think would get us a good bit of publicity on the truck-explosives project." Action included:

1. preparation (by Motor Carrier Bureau) "of a map of the U. S. showing the present routes and proposed new routes;"
2. assignment of "a writer on your N. Y. staff to do an individual memorandum on each concentration point;"
3. release of resulting material through either a Washington luncheon for "such Washington correspondents, and other interested persons, as represent newspapers in the vicinity of the so-called concentration points" or by mail and hand-placing.

On January 24, Girdler and Hardy assigned Strouse to the project.

On January 24, Strouse contacted Motor Carrier Bureau and found that map was not completed, that material was extremely involved and that M. C. B. lacked personnel to get job done in any reasonable time. After checking with Washington and being informed that project was worth the time expenditure, Hardy assigned McConville (full-time), Paget (part time) and Hollowell (part time on loan from Hurd) to help Strouse, and authorized hiring of additional temporary help.

Washington and Wickes wanted material released in first week in February. This impossible due to amount of work involved. Compromise, suggested by Washington and agreed on by N. Y., was February 13.

Project involved preparation by New York of an individualized local story for each of 104 communities... writing and reproduction of a 6-page

background memo. . . and selection and reproduction of four pieces of supporting evidence.

Girdler ruled tentatively, subject to final decision on attribution, that material would be released in Washington and back-stopped by hand-planting only where C. B. & A. personnel had extremely close personal contacts.

Question of attribution was raised by N. Y. office. Washington suggested AAA; N. Y. concurred; Washington failed to get AAA. Washington was told to go ahead with physical arrangements (room, invitations, film projection, etc.) for February 13 date, but to keep plans fluid until attribution was decided.

On February 7, Girdler and Wickes decided to use Wickes as attribution. Hardy and Strouse state they notified Beman of attribution decision; Wight and Beman state no notification was given. Wickes, who knew of attribution decision since he was a party to it, was in daily contact with C. B. & A. Washington office.

Hardy and Strouse were also in daily contact with C. B. & A. in Washington from February 4 through 12 inclusive. They constantly reiterated that N. Y. would meet the deadline, constantly urged a large press turn-out to warrant amount of work involved. Both obtained definite impression that Washington was going ahead with its end of project.

On February 12, nine Byoir girls, Hardy and Strouse came in on a holiday to help meet project deadline. At about 4:00 p. m. Washington phoned to say event could not be held on schedule the next day because Washington couldn't get reporters together on 24 hours notice. It was then that Washington informed N. Y. that nothing had been done because the question of attribution had never been settled.

At that time, truckers were withdrawing from the case almost daily. Each withdrawal altered lists of truckers, figures and conclusions in

material then being put into final form. Material had been updated as of February 12, but too much of it was in final typed form to permit further correction. N. Y. pointed out danger that postponement of release date would permit time for further withdrawals which would make release material inaccurate.

Release date postponed by Washington to February 15.

Between February 12 and February 15, eight more truckers withdrew from the case, and a ninth withdrew from half the states for which it had applied. This necessitated preparation of correcting NOTES and attachment of same to each copy of each localized story and background memo before they could be released.

Washington was sent sample copy of localized story, copy of background memo and list of supporting material by N. Y. on or before February 6.

When decision was made, on February 7, to use Wickes as attribution, Girdler confirmed his earlier tentative rule that material would, with only a few exceptions, be released exclusively from Washington. At Washington's request, list of communities for which localized stories in work was sent Washington February 8. Washington subsequently contended 30 of the 105 communities had no Washington correspondents and that material for them therefore could not be planted in Washington. N. Y. was not notified of this, though notification would have reduced the most difficult work by about 1/3.

(NOTE: N. Y. failed to check on its own which communities had Washington correspondents.)

Map delivered to C. B. & A. Washington office by Masterson of Motor Carrier Bureau on February 13. Background material mailed to Washington February 13 with request it be worked up into kits on Thursday to save time on Friday; this was not done. Localized stories delivered by Strouse February 14.

When Strouse reached Washington (evening of February 14), he, Beman, Wickes and McCartney conferred on next day's strategy. Room had been rented, and potable arrangements made, for press "open house" from 2 to 5 Friday (February 15) afternoon. Decision on showing movie still in abeyance.

Washington had been inviting press, but by communities rather than papers. That is, someone from Boston or Pittsburgh or Akron had been contacted, rather than someone from each paper in Boston, Pittsburgh and Akron.

Friday morning, Strouse could do no contact work because he to prepare correcting memo. Beman could do little contact work because he had to prepare the kits.

Turnout at the press open house was as follows:

George Zielke: Pittsburgh Post Gazette, Toledo Blade man

Correspondent, representing several Illinois dailies

John Jarrell: Omaha World-Herald (not in our area)

William Pyper: Booth newspapers of Michigan (7 papers)

Lucian Warren: Buffalo Courier-Express

Bascom Timmons: 18 papers, 6 in our area

Material was picked up for or hand delivered to on February 15:

David P. Sentner: 19 Hearst papers, 11 in our area

Paul Martin: Gannett News Service

Paul Leech: Akron Beacon Journal

Douglas Smith: Cleveland Press Columbus Citizen,

Cincinnati Post

Philadelphia Inquirer

All Washington, D. C. dailies

Correspondent for Rome and Binghamton papers (by Warren)

Material therefore released to approximately 50 papers on release date.

The 104 communities for which material prepared contain 181 dailies. Of these, 38 have no Washington correspondents, leaving a potential of 143 papers.

C. B. & A. of Washington did additional planting of material on February 16, and during week of February 18-23. Washington breakdown reveals material placed, including late follow-up, with 100 papers in 69 communities.

Outlets with which material was never placed include: Baltimore Sunpapers; Boston Globe, Herald, Post; Christian Science Monitor; Brooklyn Eagle; New York Times, Herald-Tribune, News, Post, World Telegram & Sun; Wall Street Journal; Cleveland Plain Dealer; Chicago Tribune, Sun-Times.

Outlets with which material was not placed on first day include Philadelphia Bulletin; Pittsburgh Press; all Detroit and Chicago papers except Hearst; and, of course, the above.

Clips are not yet all in. Washington and New York between them have about 25 non-duplicating clips, of which three are follow-ups of the Boston mayor's reaction to the original story and another three were personally planted by Hardy. Placement of the story was in general good, with at least six papers putting it on the front page and many giving it a 2-column head. Washington believes "most" of the 100 papers covered will be shown to have carried the story when clips all in.

(NOTE: Almost all clips received are from papers given the material on the first day.)

Personal planting was attempted by Kiely in New York, Hardy in New Jersey and Stall in Ohio. Other than Hardy's excellent three-article break in Newark News, results not yet known.

Hearings ended on February 28 (which New York learned coincidentally by calling Wickes). Connecticut's highway commissioner scheduled to testify that day. To salvage what seemed limited results, particularly in metropolitan dailies, Girdler on February 27 asked Washington to:

1. a. plant the basic story including the localized material in major papers that had never been approached, other than those in New York City, using last day of hearings as topical hook;
   b. ditto with major papers that received but didn't use original story;
   c. ditto for N. Y. City dailies, but, in those case, emphasizing Hill's testimony as additional bait;
   d. ditto for Connecticut papers, using the double Hill and last-day lead.
2. plant a final wrap-up in friendly papers that had already used story.

No clips from this supplementary project have turned up as yet.

Approximate man-hours spent by C. B. & A. N. Y. office on ICC explosives hearings project follow:

Hardy - - - - 30 hours
Strouse - - - 120 hours
McConville - 150 hours (30 overtime)
Fraser - - - - 32 hours (temporary help hired for project)
Green - - - - 30 hours (4 overtime)
Raven - - - - 18 hours (10 overtime)
Paget - - - - 12 hours
Hallowell - - 16 hours
Reynolds - - 10 hours (all overtime)
Bailie - - - - 10 hours (all overtime)

Bellini - - - - 8 hours (all overtime)

Blake - - - - - 8 hours (all overtime)

Miller - - - - 8 hours (all overtime)

MINUTIAE:

Washington requested Connecticut material in advance. It reached Washington morning of February 13 but was not unpacked or used until regular February 15 release date.

Hardy had warned Strouse to be sure to get material to papers whose correspondents did not show at open house. Strouse brought this up with Beman Friday morning and was informed material could be delivered after open house because correspondents worked late Friday night. After open house, Beman stated it was too late to deliver material.

After open house, Strouse phoned Wight and offered to stay over and help with later planting. Wight didn't think this necessary.

No C. B. & A. Washington personnel were assigned to contact work on project except Wight and Beman.

Plaintiff's Exhibit 60
Page one

ICC HEARINGS ON TRUCK HAULAGE OF EXPLOSIVES

The current ICC hearings resulted from the applications of a group of trucking concerns for permanent authority to haul explosives over routes which encompass most of the U. S.

At issue is the question: Is it in the public interest permanently to authorize vastly increased trucking of munitions and other dangerous explosives over the nation's overburdened highway system?

Answering "NO" are the American Automobile Association, the National Congress of Parents and Teachers, the Council of State Governments, the American Association of State Highway Officials, nine states, seven cities, all major U. S. railroads, three railroad brotherhoods and a variety of safety councils, peace officers' associations and highway departments. Their arguments, boiled down, are that haulage of explosives by truck constitutes a serious danger and traffic hazard, and that permanent authority is not necessary since the ICC can grant temporary authority at any time.

Answering "YES" are the truckers concerned, the Defense Department, some explosives experts and, by implication, the American Trucking Association. They argue that the national defense effort demands greatly increased haulage of explosives by truck, and that such haulage is no more dangerous than by rail.

Hearings on the issue started in Chicago last September and are now continuing in Washington. They are being conducted by the ICC because Congress has given that body exclusive regulatory power over the interstate transportation of explosives. They have their roots in World War II.

HISTORY

Before the war, almost all explosives moved in the U. S. were carried by railroad. A few truckers had explosives-hauling certificates, but the vast majority of authorized motor carriers were issued "general commodity" certificates which excepted explosives and other dangerous articles.

During the war, as an emergency measure, the ICC authorized motor carriers to haul explosives, but only until the termination of the various War Powers Acts.

At first, truckers used their new temporary authority mostly for short hauls, as from a rail terminal to a pier. Subsequently, they began competing with the railroads for the long-haul explosives traffic.

Despite the competition of the trucks, the railroads carried 97 per cent of all war freight including explosives moved in the U.S. during World War II.

ORIGINAL RISS APPLICATION

The second War Powers Act was terminated on June 30, 1946. All truckers' temporary authorities to haul explosives automatically ended on that date, with one exception. The authorities of a large Kansas City, Missouri, trucker, Riss & Company, were extended.

Riss operates a fleet of 481 truck-tractors and 787 semi-trailers, and supplies approximately 33,000 route miles.

In 1947, Riss asked the ICC to make its temporary authorities permanent. Hearings were held, but the Army and Navy failed to appear in support of Riss' contention that the national defense effort necessitated additional truck haulage of explosives. The ICC rejected the Riss application. Riss appealed to the courts, and the Supreme Court held -- in April, 1951 -- that the ICC examiner assigned to the Riss case was unqualified, and that Riss was entitled to a new hearing.

Meanwhile, Defense Department witnesses changed their policy. They appeared at other ICC hearings to which Riss was not a party, and testified that permanent authority to carry explosives by truck would be helpful in certain emergencies for which rail transportation was too slow.

OTHER TRUCKERS FILE (AND WITHDRAW)

As the time for the new Riss hearings approached, other truckers -- bolstered by the unexpected change in policy of the Defense Department and anxious to share the lucrative business of hauling munitions with Riss -- filed applications of their own for authority to carry explosives.

When applications flooded in, the ICC set a cut-off date after which no applications would be considered in connection with the Riss hearings. Approximately 60 applications were received by the cut-off date.

The public also reacted. Aroused by fear that widespread haulage of explosives along streets and highways would endanger both lives and property, women's and civic groups passed resolutions in opposition to the practice. American Automobile Association clubs agitated against the truckers' applications. Newspaper editorials and cartoons emphasized the danger.

The public clamor caused nearly half the truckers to withdraw their applications. As of this writing, 28 motor carriers other than Riss still have applications on file.

Eight of the original applicants withdrew as recently as the reopening of the hearings in Washington on February 13, 1952, and a ninth withdrew at that time from 16 of the 31 states for which it had requested explosives-carrying authority. Ten other carriers withdrew from the case just prior to the reopening. In a letter to the ICC dated February 6, 1952, Floyd F. Shields, attorney for eight withdrawing carriers, explained that: "The matter has been paraded up and down the entire country, in the press, before governor's conferences, before many state and the national legislature and before public-spirited groups and associations... In view of the entire situation... including the prospect of a further and much more voluminous record and the entailing of a great deal more time and considerable additional expense, it is the desire of each of these applicants" that their applications "be dismissed".

THE CURRENT HEARINGS

The new Riss hearings opened in Chicago on September 17, 1951. Conducted by ICC Examiner B. E. Stillwell. The carriers other than Riss which had not withdrawn as of that date were consolidated into a single case.

The Riss hearings ended on January 29, 1952.

The current hearings, started in Washington on February 13, 1952, are on the consolidated case, now consisting of 28 carriers.

The consolidated carriers, like Riss, are asking for permanent authority to haul explosives. Unlike Riss, they do not now have temporary authority. They have therefore requested that the explosives' exceptions be stricken from their regular general-commodity certificates and, in some cases, have also applied for new explosives-carrying routes.

Including Riss, the truckers participating in the hearings operate 882 trucks, 2,929 truck tractors and 5,653 semi-trailers. They include both "regular" and "irregular" carriers. "Regulars" (carriers authorized to travel only on specified routes) have requested specific authority to carry explosives on practically every mile of the primary U. S. highway system. "Irregulars" (carriers given blanket authority to operate anywhere within a state or group of states) have requested authority to truck explosives anywhere in every state in the union except Montana and North Dakota.

OPPOSITION ARGUMENTS

When the ICC consolidated all the carriers except Riss into a single case, all parties agreed that the testimony in opposition to the truckers' applications would be presented during the Riss hearings and then "stipulated into the record of" (carried over intact into) the consolidated case.

The "opposition" testimony at the Riss hearings is therefore relevant to the present consolidated hearings. Exclusive of the railroads, 77 organizations, states, municipalities and businesses have been represented by witnesses who opposed the truckers' applications.

Nine trucking companies testified against Riss, including five which had themselves applied for authority to haul explosives.

The arguments against increased haulage of explosives by truck emphasized six points:

1. Truck haulage of explosives presents the constant hazard of catastrophic explosions which would be particularly tragic in crowded communities and on traffic bottlenecks like bridges and tunnels.

The PTA and safety commissions emphasized the danger to school children and citizens living along truck routes. Port and tunnel authorities described how destruction of a single key bridge or tunnel would necessitate vast rerouting of traffic and seriously impede the defense effort. The rail brotherhood spokesmen pointed out the danger to train crews and passengers alike of train-truck accidents.

2. Additional truck haulage of explosives demands additional safety precautions for which the money and manpower are not available.

State and city representatives and police officials agreed that explosives-laden trucks would have to be given police escorts through metropolitan areas, and would have to be restricted to specified routes. Funds for this extra policing are lacking.

3. Widespread truck haulage of explosives would add to the overcrowding of streets and highways, already a serious national problem.

4. The additional heavy traffic resulting from truck haulage of explosives would speed up the deterioration of the U. S. highway system.

Due largely to the lifting of weight limitations on trucks as an emergency measure during World War II, the country's roads are in bad shape and are getting worse. "To bring the nation's road and street system to acceptable standards for safe, convenient and economical motor transportation," Brookings Institution experts estimate, "construction outlays in the order of $5 billion annually would be required during the next 10 to 15 years." In 1950, according to the U. S. Bureau of Public Roads, the U.S. spent $2.4 billion on highway construction, or less than half the needed amount.

5. Widespread permanent authority to truck explosives is not necessary because the ICC has the power to grant temporary authority at any time and in the event of any emergency. The Council of Governors underscored this point.

6. Explosives can be handled more safely by rail than by truck. In addition to the obvious advantage of hauling on a known route which cannot be changed, witness as at the Riss hearings pointed out that ICC regulations governing rail transportation of explosives are extremely comprehensive, and that the regulations are enforced by ICC inspectors and by the Association of American Railroads acting as agent for the ICC. Enforcement of safety regulations against truckers, on the other hand, is much more difficult. The AAA emphasized that cuts in the budget of the ICC's Section of Safety reduced personnel available to inspect truckers and seriously aggravated the danger of trucking explosives.

The railroads testified at the Riss hearings as "protestant" carriers. They argued, as did the other witnesses, that trucking explosives was not required by "public convenience and necessity" and also stated that continued diversion of the high-rated explosives business to truckers would of necessity result in increased rates on bulk traffic like grain and coal to make up the difference. The 16 representatives of industrial shipping concerns and city boards of trade who testified against the truckers' applications supported the railroads' warning.

February 25, 1952

NOTE: The above memo was prepared by Lewis Wicken, Jr., chairman of the Traffic & Law Committee. Eastern Railroads, for the ICC hearings on the haulage of explosives by trucks.

Plaintiff's Exhibit 61
Page one

FOLLOWING ARE THE TRUCKING CONCERNS, WITH NUMBERS OF TRUCKS AND SEMI-TRAILERS OWNED BY EACH, WHICH STILL HAVE APPLICATIONS ON FILE REQUESTING PERMANENT AUTHORITY TO HAUL DANGEROUS EXPLOSIVES THROUGH NEW YORK CITY. TO AVOID DUPLICATION, TRUCK-TRACTORS -- WHETHER OWNED OR LEASED -- HAVE BEEN OMITTED. THE INFORMATION WAS COMPILED FROM CERTIFICATES FILED BY TRUCKERS WITH THE ICC.

REGULAR ROUTES

Interstate Motor Freight System - 13 trucks, 687 semi-trailers; 3 routes through New York City.

Kramer Brothers Freight Lines, Inc. - 43 trucks, 266 semi-trailers; 6 routes through New York City.

IRREGULAR ROUTES

Eastern Motor Express, Inc. - 25 trucks, 80 semi-trailers; anywhere in 13 states, including New York.

Garford Trucking, Inc. - 34 trucks, 185 semi-trailers; anywhere in 10 states, including New York.

Hancock Trucking, Inc. - 99 trucks, 358 semi-trailers; anywhere in 10 states, including New York.

Hughes Transportation, Inc. - O trucks, 41 semi-trailers; anywhere in 26 states, including New York.

Ringsby Truck Lines, Inc. - O trucks, 268 semi-trailers; anywhere in 28 states, including New York.

Spector Motor Service, Inc. - 0 trucks, 525 semi-trailers; anywhere in 15 states, including New York.

C. I. Whitten Transfer Co. - 4 trucks, 20 semi-trailers; anywhere in 37 states, including New York.

T. M. Zimmerman Co. - 4 trucks, 9 semi-trailers; anywhere in 6 states, including New York.

REGULAR AND IRREGULAR ROUTES

Riss & Co., Inc. - 0 trucks, 787 semi-trailers; 9 regular routes through New York City and anywhere in 15 states, including New York.

SUMMARY

More than 3,400 trucks and trailers will be authorized to haul dangerous explosives through the streets of New York City if applications now pending before the Interstate Commerce Commission are granted.

A survey reveals that 11 different trucking concerns have requested permanent authority to carry explosives along routes which include New York City. The 11 companies own and operate 222 trucks and 3,226 semi-trailers.

Three of the companies in their certificates of application specify eighteen routes which pass through New York City. The others have requested blanket authority to carry explosives from any location in certain listed states, including New York, to any other location in the same states. Granting of the applications would authorize all 3,448 trucks and semi-trailers owned by the 11 companies to haul munitions and other dangerous explosives through New York City.

The 11 companies are among 29 which now have applications on file with the ICC for permanent authority to haul explosives along most of the major U. S. highway routes. Authority has been requested to truck explosives to and from every place in the 48 states except Montana and North Dakota.

The truckers' applications are so geographically inclusive because U. S. military and naval installations are so widespread. The goal of the ICC applications is primarily the munitions-carrying business. Munitions are carried both to and from explosives-manufacturing plants, storage depots, ports, proving grounds, and the sites of field exercises, and various installations of these types dot the entire country.

Very few American communities are not on at least one long-haul route between a depot and a port, a munitions factory and a proving ground, or etc.

February 21, 1952

Plaintiff's Exhibit 62

TEXAS RAILROAD ASSOCIATION
Commodore Perry Building
P. O. BOX 1028
AUSTIN 66, TEXAS

January 11, 1952

Mr. Harold Sims, Director of Public Relations
Association of Western Railways
Public Relations Office
Room 1600 - 105 West Adams Street
Chicago 3, Illinois

Dear Harold:

If you plan to reproduce some of the leading news stories and editorials without the AWR identification on the ICC explosive hearings, I would like to have about 50 copies.

These copies are to be circulated among the Officers of the County Judges and Commissioners' Association of Texas, Parent and Teachers Association and the Farm Bureau of this state.

It would be best to keep these as free as possible from railroad and Brotherhood publication articles.

Yours very sincerely,
/s/ Gilbert Smith
Gilbert Smith

GS:dm

GS: Write Mr. Smith and say we shall be glad to do this. Think it can be done without making any new plates, and generally the articles referred to in last paragraph above - which he doesn't want - have not been mixed up with any other stuff. - HMS 1-17-52

Plaintiff's Exhibit 62 A

Memo from Desk of GEO. SMOLIK

Ed:

At your earliest opportunity will you please weed out some of these reproductions and run 50 copies for Mr. Smith. Note particularly the last paragraph of his letter that he would like them without our "bug".

GS 1/22/52

[Handwritten note]

Ed

See me in am
H8 1/24

Plaintiff's Exhibit 62 B

Mr. Gilbert Smith,
Special Counsel,
Texas Railroad Assn.,
Commodore Perry Building,
P. O. Box 1023,
Austin 66, Texas

January 22, 1952

Dear Gilbert:

In answer to yours of January 11th, we shall be glad to forward to you 50 copies of reproductions on the ICC explosive hearings without the AWR indentification and restrict them according to the last paragraph of your letter. I have instructed our mailing room to start these going to you without delay.

With kindest regards,

Cordially,

S-s

Plaintiff's Exhibit 62 C

January 25, 1952

Mr. Gilbert Smith,
Special Counsel,
Texas Railroad Association,
Commodore Perry Bldg.
Austin 66, Texas

Dear Mr. Gilbert:

Referring further to yours of January 11, we have forwarded to you today 50 copies each of 12 plates of reproductions on the explosive situation which might be of possible use to you, and will send you 50 copies of further stories and editorials on the explosive hearings that may be released from this office. You will note that we have eliminated the AWR identification from those sent you today.

Mr. Sims is back in Washington and I shall make it a point to see that these go to you promptly.

Yours very truly,

/s/ George Smolik

George Smolik
Chief Clerk Pub. Rel. Office

S-1

Plaintiffs' Exhibit 62-D

EXPLOSIVES

II-583-62-H

The NATIONAL SHERIFF
NOVEMBER, 1961

Protests Rise Over Plans to Move High Explosives On Main Roads

A proposal of great importance to all communities in the United States should have the attention of all sheriffs—the trucking industry wants to haul dangerous explosives between government arsenals and other military installations throughout the country.

More than 50 trucking companies have filed applications with the Interstate Commerce Commission for authority to transport dangerous explosives in huge trucks over a network of highways covering practically the entire country.

One of the applicants, a Kansas City, Mo., trucking firm, is already hauling tons of explosives for the government on temporary authority granted by the commission. The company seeks this authority permanently.

Other trucking concerns, eager for the big profits paid for the hauling of munitions and explosives have flooded the commission with applications.

The commission began hearings on the applications at Chicago, September 17. After hearing witnesses from the Army, Navy and Air Force endorse the movements of explosives over the highways, protests from various individuals and organizations compelled the commission to order a postponement of the hearing until October 29 in order to give protestants opportunity to prepare a case against the applications. Attorneys representing the trucking companies vigorously opposed the postponement. Governor Frank J. Lausche of Ohio, then chairman of the Conference of Governors, The American Automobile Association and other organizations demanded that the public be given opportunity to point out the hazards that would result from the movement of explosives over the highways.

Remote From Population Security Involved

In establishing military arsenals and depots the government has been careful to locate them in areas remote from populous centers, yet now the Defense Department and the trucking companies propose that loads of potential death be hauled over the roads and through cities populated by millions.

There is room for doubt whether any emergency at this time requires the movement of dangerous explosives over the highways. Representatives of the railroads, which heretofore have handled the transportation of government explosives and munitions, have pointed out to the commission that they can supply all the transportation necessary for the movement. They also pointed to their record in World War II, in carrying munitions. Only three accidents (none involving loss of lives) occurred in the movement of thousands of carloads of all kinds of munitions.

Protestants argue that there is no reason now why the public should be subjected to such hazards. They observe that a motorist on the highway has no way of knowing whether or not the truck approaching him is loaded with high explosives, making him liable to be blown to bits in the next 30 seconds, if an accident occurs.

The numerous truck accidents on the highways today show that even the most careful drivers cannot avoid collisions. It was also pointed out that trucks frequently catch fire after being involved in accidents, thus adding to the danger of explosions.

URGENT!

The proposal described in this article is of such prime importance to sheriffs, and all officials charged with responsibility for the public safety, that the NSA urgently requests written expressions of opinion, for use in properly expressing association policy.

Sheriffs are urged to write their opinions, as completely as possible, and send them to NSA headquarters. Promptness is also urgent.

Another point which has been raised involves security. It would seem an almost impossible task to screen the thousands of truck drivers who would handle the loads. It would be a simple matter for a saboteur to drive a truck loaded with 30 tons of high explosives into the area of a vital industry, or place it on a strategic bridge, or touch off its cargo at some point where the defense effort would be seriously hampered.

Early in October a truck loaded with rocket fuses collided with a Baltimore and Ohio switch engine on Chicago's south side. The fuses were spilled over the B. and O. right of way as the truck trailer was sheared in two. Fortunately there was no explosion and no one was injured, but there could have been a tremendous explosion with possible heavy loss of life as well as heavy property damage.

The government takes every precaution to prevent explosions at its arsenals and depots, yet it is proposed today to take these same explosives from the arsenals and place them on the highways with little or no regulation or safety precautions in behalf of the public.

BEST COPY AVAILABLE
from the original bound volume

Plaintiffs' Exhibit 62-E

EXPLOSIVES

11-582-62-H

Bethesda, Md., Tribune November 9, 1951

State Urged to Put Limit On Trucking of Explosives

By Washington I. Cleveland

The hauling of explosives, poison gas, and related materials over the highways of Maryland is becoming more and more of a hazard to the safety of motorists using the highways, and to the communities through which this traffic passes.

On Friday, November 2, officials of the Maryland State Roads Commission conducted a tour of highway improvements in Western Maryland. Governor McKeldin headed the inspecting party which included press and radio representatives from Baltimore and Western Maryland.

The caravan of official cars started from Cumberland and proceeded west on Route 40, toward the Pennsylvania State Line. The weather was overcast. Visibility was not good. The roads were wet and traffic moved slowly.

As the party entered the mountainous portion of the trip between 10 and 15 miles from the Pennsylvania Border, traffic slowed to a snail's pace and wound its way around the curves and up and over the mountainous stretches of the road.

Trucks Cause Congestion

The congestion was due to the presence of seven huge trucks, three of which were enormous tractor trailers hauling explosives. Two of these trailer trucks were "tailgating," that is, one of them appeared to be pushing the other up the hills.

On the upgrades these vehicles slowed down to a speed considerably under five miles per hour. Because of the curvature of the road and the steep grades it was literally impossible to pass these vehicles with safety.

Things Happen

Under such circumstances, the patience of drivers became exhausted and things began to happen. Two ladies driving an automobile immediately behind the two trailer trucks read the sign "Dangerous" posted in large red letters on the back and sides of the truck and pulled over on the shoulder of the road, obviously unwilling to drive in close proximity to these vehicles loaded with explosives.

The driver of the third tractor trailer became impatient at the slow progress up the hill and turned out of line, crossed the double white center lines and attempted to pass the vehicles ahead of him as he approached the summit of the hill.

By this time the atmosphere was becoming foggy and it was impossible to see at any safe distance.

Incriminating Picture

A photographer could have taken an incriminating picture showing the three tractor trailer trucks, each loaded with 29,000 pounds of smokeless powder approaching, and then passing over the crest of the hill, one truck apparently pushing the other, and the third truck abreast of the other two and on the wrong side of the road.

I was in the automobile next in line and was acutely aware of the danger of a head-on collision which could result in the demolition of three huge truckloads of explosives and the wiping out of vehicles in front and behind for a great distance.

Luckily No Mishaps

One of the cars in the caravan attempted to pass one of the two tractor trucks which were "tailgating." The driver of the truck for some reason best known to himself, decided he didn't want the car to pass his truck and proceeded to pull out to the left forcing the driver of the automobile over to the extreme left of the road.

Fortunately, this incident also ended without mishap, but the sight of a truck loaded with explosives deliberately forcing an automobile off the road was an amazing spectacle, to say the least.

The driver of the car in which I was riding was a Maryland State Trooper in uniform and he went into action. For purposes of this narration it may be stated that the driver of the truck which passed over the crest of the hill on the wrong side of the road gave as his excuse that his truck was running so badly he didn't dare stop for fear he would not be able to start again.

The driver of the truck which forced the automobile off the road was defiant and claimed that the driver of the automobile should not have tried to pass him. Of course, the trucks were being driven too close together.

The Maryland traffic regulations require that trucks of this nature be kept a minimum distance of one hundred and fifty feet apart.

The urgent need for a third traffic lane on these stretches of mountain roads so that trucks can pull over to the right lane leaving the center lane for passenger vehicles, is also well illustrated by the congestion which occurs daily on these highways extending up and down the mountains.

Careful Study Urged

These two incidents illustrate most vividly the importance of the program now being waged by the American Automobile Association to limit the hauling of explosives over public highways where such hauling is not necessary or justified and to greatly increase the supervision and policing of such hauling where it is necessary.

The officials of the Maryland State Roads Commission and the Maryland State Police are urged to give this subject very careful study and attention so that every possible step within reason will be taken to prevent an accident such as occurred in World War II where a community was literally blown to bits by such an accident and explosion.

PARSONS (Kans.) SUN
November 16, 1951

Always Paramount

Hearings in Chicago before the interstate commerce commission on authority of truck lines to haul explosives have been transferred to Washington on a point of more than passing interest. Truckers are challenging the right of representatives of the public to intervene in the proceedings.

The American Automobile Assn. and other groups have had witnesses appear in protest to the truckers' application for permanent explosive permits. Their interest was solely one of protecting the public from danger not only on the highways but also in crowded urban areas through which explosive cargoes pass.

The trial examiner hearing the case for the ICC at Chicago upheld the right of the public to intercede. It is on an appeal from his decision that the case now goes before the whole commission.

If the public does not have the privilege of raising its voice on a matter directly affecting its own welfare, as the truck lines contend, then things have come to rather a strange pass. Public interest is always paramount. It was on that basis regulation of railroads was carried out and the interstate commerce commission first came into existence. It is to protect the public interest that regulatory bodies have been established in every state to deal not only with transportation but also utilities, insurance and other fields.

The public has evidenced a growing concern over the transportation of explosives over highways and streets of the nation. The truck lines have a fundamental weakness in their case when they seek to exclude the public from consideration and in effect, deny a public interest exists in the issue.

The interstate commerce commission, dedicated to the public interest, can give only one answer to that line of argument.

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Plaintiffs' Exhibit 62-E

EXPLOSIVES 11-582-62-H

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The public has evidenced a growing concern over the transportation of explosives over highways and streets of the nation. The truck lines have a fundamental weakness in their case when they seek to exclude the public from consideration and in effect, deny a public interest exists in the issue.

The interstate commerce commission, dedicated to the public interest, can give only one answer to that line of argument.

Plaintiffs' Exhibit 62-F

EXPLOSIVES 11-580-62-H

THE PARSONS, KANSAS, SUN, THURSDAY, NOVEMBER 15, 1951.

Public Is Concerned—

Explosives by Truck Pose New Menace

By A. L. Stufts

Topeka, Nov. 1.—Kansans are coming to a sudden realization that life and property are cheap pawns in a sudden, unrestricted surge to move thousands of tons of explosives in trucks over state highways and city streets, in a 24-hour daily menace to every person, school child home and industry.

Around the clock, mammoth boxcar type trucks carry loads of death dealing cargo at top speed. In flights across the state they pass defense industries, schools and thousands of private homes. The explosion of one of these agencies of destruction, through collision on the highway or with a train at a grade crossing, would deal death to scores of defenseless men, women and children, and cause millions of dollars of property loss.

Of course, the great state of Kansas has done something about the situation. Under a law, which permits the highway department and other agencies to lend a helping hand to all manner of safety campaigns, steps have been taken.

Sign Necessary

There is a regulation requiring carriers of sudden death in display "Explosives" signs on those heavily loaded highway smashing transports. Obviously, motorists have slight opportunity to read those warning signs on a truck's death defying flight down a highway at 50 or 60 miles an hour. There is a meager chance for a citizen to avoid a sudden trip to the Great Beyond if an explosive laden truck goes into a ditch collides with another on-rushing vehicle or a train loaded with passengers. A carload of safety slogans in a classroom or along the highway leading to the schoolhouse wouldn't prevent a tragedy which could kill or maim every child if the explosive loaded truck hit a defective road spot and crashed near the building.

Until recently owners of family pleasure cars have merely struggled under back breaking tax loads and worried about increasing traffic counts. Now their problems are increasing. They have seen their once smooth, beautiful travel lanes battered to dust with increasing weight loads. There isn't a school child in America who can't give you the correct answer to that problem.

They know that these once nice, durable all weather highways, which dad and mom helped build, carry the youngsters to school, take produce to market, get the family to church and picture shows 12 months of the year. They know that now dad and mom are paying more than their share of the cost for thicker, heavier roads, which he family did not demand and does not need. The situation applies not alone to the farm. It is a problem of increased construction and maintenance cost for every family car owner in every small town and every large city.

From editorial rooms in Kansas and throughout the nation are coming sharp, pointed words of criticism of lax controls and wanton abuses of public highway privileges by truckers, who risk life and property for personal gain, with their loads of explosives.

The Parsons Sun took a lead in demanding that heavily loaded, hard driving carriers of death and destruction be removed from highways. The fear of impending devastation has seized individuals and groups with a realization that "it could happen here." Those people are not likely to be happy with mere regulations. They want the menace removed.

National Problem

Clearly the present directive for an "Explosive" sign on a truck carrying a capacity load of "Boom, Death!" is not in the true spirit of a rousing safety speech in the town hall. Amazingly, though, the frantic distribution of thousands of truckloads of explosives continues, not only in this vitally vulnerable midwestern area but throughout the nation. That, in spite of the record of collisions of explosive loaded trucks with trains at grade crossings and with vehicles on highways across the country. It could happen in front of your home. It could wreck your office, store or industry. It could kill your child in the classroom or at play.

Quite unbelievably, 49 major truck companies, with a lust for profits, have applied to the interstate commerce commission for authority to haul munitions over public streets and highways from coast to coast. At the recent conference of governors in Gatlinburg, Tenn., a resolution protesting use of highways for hauling explosives was due for consideration. Nobody really explained why this expression favoring protection of life and property never appeared for full dress discussion.

Railroad brotherhoods have protested use of highways by explosive laden trucks as unwarranted hazards for trainmen and passengers.

In keeping with these moves, the national gathering of the American Automobile Assn. in Kansas City recently voiced approval of a speech by President Lou Holland, who deplored lax enforcement of truck weigh laws and rapidly deteriorating highways.

Recently "Labor," a powerful defender of the rights and interest of wage earners everywhere, spoke from its editorial watch tower in Washington. "Juggernaut trucks take fast rising toll of lives and limbs on roads," it asserted in a page-wide streamer. Then it gave casualty figures assembled by the interstate commerce commission — 16,978 truck accidents in 1949 a 90 percent increase since 1941. Those 1949 accidents brought 1,188 deaths, 9,901 injuries. "Labor" said there were 4,912 bus accidents in 1949, with injuries and deaths more than double those recorded in 1941. The publication recited that the powerful, highly financed truck-bus lobby succeeded in chopping off an ICC congressional appropriation, in an effort to wipe out the department's safety division and suppress reports of truck-bus accidents.

On Little Fellow

It all carries a sad story to the little fellow with his family car, who faces increased problems when he goes for a pleasure trip. Some states have sought to provide a measure of safety by banning truck movements except on designated routes during weekends. Other states are moving rapidly toward requiring exclusive truck-bus lanes, with the carriers providing their own right-of-way, construction and maintenance costs, with ad valorem taxes on the same basis as now provided for railroads.

Out in Colorado, state highway engineer Mark U Watrous has asserted: "Our major highways are less adequate for today's needs than in the early part of World War II. Everyone directly concerned with America's highway problem knows full well how heavier loads smashed our highways during the last war. Everyone knows that not a state in the nation has recovered from that blow."

In the final analysis, the big expense load, the hazard to life, limb and property is on the little fellow. He pays for super-highways which he does not require. His liability insurance premiums mounts with "Crash! Death" records on highways, occasioned by new hazards of speeding, overloaded explosive trucks, with added mortuary business provided by speed-mad reckless drivers.

Somewhere, agencies of government are failing to meet their responsibility for the protection of life and property.

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Plaintiffs' Exhibit 62-G

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EXPLOSIVES

12-671-62-H

UTICA (N.Y.) OBSERVER-DISPATCH - Nov. 27, 1951

Explosives and Trucks

To the Editor:

I understand application has been made by more than 60 motor carriers to the ICC for authority to haul dangerous explosives on the public highways of the United States. This is a serious threat to the safety of the public and should not be allowed.

Every day we read of collisions between trucks and pleasure cars on our highways, and people killed and seriously injured. The damage done to the ordinary freight these trucks carry is nothing compared to what it would be if they were loaded with high explosives.

The application is being opposed by the several railroad brotherhoods, the railroads themselves and the Automobile Association of America.

W. H. SPICE.

Prospect.

TULSA TRIBUNE
Nov. 28, 1951

Truck Firms Ask to Haul Explosives Over State Roads

WASHINGTON, Nov. 28 (AP)—The interstate commerce commission today considered applications of 60 trucking companies for permission to carry explosives over Oklahoma highways and those of adjacent states.

Lloyd F. Palmer, manager of the Oklahoma safety council, Tuesday urged the commission to deny the applications on the grounds that the highways were already dangerous.

"We do not believe the citizens of Oklahoma should be placed in greater jeopardy by the increased hauling in interstate commerce, of dangerous explosives on the highways of our state," he said.

OKLAHOMA CITY
OKLAHOMAN
November 28, 1951

Trucking of High Explosives Hit

WASHINGTON, Nov. 27—Backed by spokesmen from Arkansas and New Mexico, Lloyd Palmer, manager of the Oklahoma State Safety council, Tuesday asked the interstate commerce commission to deny applications of 60 trucking firms to transport explosives over highways.

Testifying before a commission hearing, Palmer said, "We do not believe citizens of Oklahoma should be placed in greater jeopardy by increased highway hauling of dangerous explosives in interstate commerce."

Palmer cited a nine-mile stretch of U. S. 69 north and south of McAlester, over which trucks with explosives must travel to or from the naval ammunition depot, as a prime example. He called it "suicide lane."

J. T. Reece, Santa Fe, director of school transportation for New Mexico, also protested granting the truckers permits because of danger to school children.

H. D Booth, safety director for the Arkansas highway commission, also made protests. Booth said trucks from the naval ammunition depot at Shumaker were headed carefully while on the navy reservation "then turned loose on the highways."

OKLAHOMA CITY
OKLAHOMAN
November 29, 1951

City Woman Fights Explosive Trucks

(Oklahoman-Times Washington Bureau)

WASHINGTON, Nov. 28—Mrs. W. S. Jerkins, Oklahoma City, treasurer of the Oklahoma Congress of Parent-Teachers, Wednesday added her voice to opposition to highway trucking of explosives.

Mrs. Jerkins appeared as a witness before an interstate commerce commission hearing started Tuesday. Sixty trucking firms are seeking applications to transport explosives in interstate commerce.

The Brotherhood of Locomotive Engineers also appeared Wednesday in opposition to granting the truckers' application.

Lloyd Palmer, director of the Oklahoma Safety council, was a witness against the truckers' plea Tuesday and cited hauling from the naval ammunition depot, McAlester, as a hazard.

Mrs. Jerkins said collisions between school buses and explosive trucks would be a catastrophe.

Guy L. Brown, Cleveland, Ohio, official of the railway brotherhood voiced his unions' opposition and added the union was also interested in "maintenance of a sound and solvent railroad industry."

PARSONS (Kan.) SUN
December 4, 1951

Potential Disaster

A truck caught fire west of Pratt last summer. It was no ordinary truck fire, for the vehicle was loaded with artillery shells. What was left of the truck hardly lent itself to a photograph. The highway in the immediate vicinity was badly damaged. She is exploded in all directions.

"Fortunately," says the Pratt Tribune in recounting the incident, "this happened in open country but it could have happened in the Main street or First street in Pratt. Or it could have happened in front of school buildings or in the center of any business or residential district of any community through which trucks pass. The results could have been disastrous."

Right now the Interstate Commerce commission is holding extensive hearings on applications of truck lines for permanent permission to carry explosives. They are operating now under temporary authority.

It is difficult to see how any agency representing the public interest as the ICC does would place public welfare and safety in jeopardy. That is what widespread hauling of explosives by trucks would do. The country is fortunate that disasters have not happened before this. The odds distinctly favor such a tragedy.

The truckers are making a new grab for authority. They didn't haul explosives in any volume during World War II. Munitions were handled by railroads and with an impressive safety record, both from the standpoint of the public and from railroad employes.

No overpowering reason for changing this procedure has been produced to date by either the truckers or by the government. The ICC should give most thoughtful consideration to any decision which might endanger the lives and property of citizens all over the country, when that threat can be largely avoided by simply following experience which has proved entirely satisfactory in the past.

BIRMINGHAM (Ala.) NEWS
November 30, 1951

Load of explosives on run-away truck!

A truck, carrying explosives, ran off the highway and down an embankment near Warrior early today, but caused no damage or injury.

William Sellers, president of Baggett Transportation Company, owners of the truck, said the accident occurred when bright light temporarily blinded the driver.

OKLAHOMA CITY
OKLAHOMAN
December 2, 1951

Broader Horizons?

In view of the growing toll on the nation's highways it would seem the hazards of the wayfarer were sufficient.

Impressive is the concussion produced by two vehicles in head-on collision at speeds in excess of a mile a minute.

Impressive also is the destruction of life and limb, rolling stock, bridge railings and other appurtenances of the road.

If this were not enough, however, the nation's truckers have come forward with a proposition which broadens infinitely the possibilities of highway travel!

To the interstate commerce commission they propose the large-scale movement by truck of munitions destined for seaports around the country.

Under such an authorization extremely interesting possibilities would arise immediately. Immeasurably broadened would be the opportunities awaiting the motorist determined to kill himself and those with whom he comes in contact.

On competent authority it is estimated any factory near the point at which a 20,000-pound truckload of munitions exploded would be damaged seriously and might be demolished.

No longer, therefore, would the breakneck driver be confined to the highway and its immediate environs. With the aid of a truckload of TNT he could make himself felt in a factory perhaps a mile away.

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DECATUR (ILL.) REVIEW
December 4, 1951

Gasoline Truck Accidents

It was a little short of miraculous that no one died when a New York Central train carrying 275 passengers crashed into a heavily loaded gasoline truck near Kalamazoo, Mich., last week. Many thought immediately of the street car-gasoline truck crash in Chicago, May 25, 1950, when 33 died and 24 were injured.

In the Michigan accident all the passengers were gotten out of the ten-car train which burned. The loss of the two diesel engines is put at a million dollars. In addition three houses burned. Six persons went to the hospital, two in critical condition.

The impact was similar to that in Chicago. Gasoline was sprayed everywhere. In Chicago the gasoline spattered street car, pedestrians, passing cars and eight buildings were set on fire. The real disaster was in the street car where 33 burned to death.

There was much discussion in Chicago about the handling of big trucks of gasoline through crowded streets. The accident was at 6:30 in the evening. There was talk of strict regulation.

Gasoline trucks have been in other highway accidents despite careful driving. The numerous accidents between passenger cars and trucks are not always due to truck drivers. Auto drivers take too many chances. Where gasoline trucks are involved car drivers should use extreme caution. That seems the only answer at present to gasoline trucks on the highway. As for trains and trucks, it is up to the truck drivers.

Despite all safety construction and regulations, loaded gasoline trucks are a hazard.

PUEBLO (Colo.) CHIEFTAIN
November 30, 1951

Fifteen Trucks Of Explosives Moving Thru Pueblo Each Day

The requests for police escorts for trucks moving explosives thru streets of Pueblo are averaging about 15 a day, Police Chief J Arthur Grady said Thursday.

In recent days, three, four and five trucks carrying the explosives have been driven thru the city at the same time.

Most of the explosives are being shipped out of the Pueblo ordnance depot, and must pass thru the residential and business sections.

All movements to and from the ordnance depot must come over the E Eighth street bridge because the Fourth street bridge is limited to loads of less than 4,000 pounds.

Trucks using the highways south of the city must use the S. Main or Union Ave. bridge, necessitating movement thru the business section.

Chief Grady may attend a hearing before the interstate commerce commission late this week or next week at Washington, D. C., where a petition of 60 trucking firms is being considered. The truckers are seeking a permanent certificate of necessity and convenience for shipping of all types of explosives thruout the nation. They now have temporary certificates.

The petition is being opposed by the Western Association of Railroads and by the American Automobile Association.

There is no city ordinance requiring a police escort for explosive shipments thru the city, but Grady has adopted the policy as a safety measure.

State law requires that trucking firms ask for escorts when the trucks are being driven thru city streets.

State regulations also require that trucks carrying explosives be placarded with a notice 22-inches wide and 14 inches deep. The word "explosives" must appear in letters at least four and one-half inches high, and the placards must be carried on each side and at the rear of the trucks.

A red flag on each end of the vehicle may be substituted for the placards, but the word "danger" in white letters not less than six inches high must be used in conjunction with the flags.

Watson Bros., Navajo and Haddock Truck Lines have permits to haul explosives on the road, but do not have permits to haul to the ordnance depot.

They bring the explosives to Gottula Trucking Co., which puts its own driver on the vehicle, takes it to the depot then returns it to the city where a truck line driver takes over.

Rice Truck Line and Boulder-Denver Truck line have individual permits to haul explosives to the depot.

WASHINGTON STAR
December 9, 1951

Train Hits Alexandria Trucker Hauling 16 Tons of Explosives

By the Associated Press

NORFOLK, Va., Dec. 8.—A truck-trailer loaded with 16 tons of high explosives pulled up to the Naval Ammunition Depot gate at St. Julien's Creek near here today.

The truck, driven by Frank Young Parker, 28, of Alexandria, Va., was third in line waiting to be checked in. The trailer of Mr. Parker's truck had not quite cleared the Virginian Railway grade crossing.

Suddenly Mr. Parker heard the whistle of an approaching train. He immediately shoved his gears in reverse and got the trailer off the tracks.

But the 50-car train struck the cab broadside and knocked the cab loose from the trailer.

The cab landed about five feet from the trailer and caught fire. Mr. Parker was rushed to a hospital with second and third-degree burns.

Witnesses said Mr. Parker's prompt action probably saved many lives.

WASHINGTON POST
December 9, 1951

Driver Risks Life To Move Truck With Explosives

NORFOLK, Va., Dec. 8 (AP)—A tractor-trailer truck loaded with 16 tons of high explosives pulled up to the Naval Ammunition Depot gate at St. Julien's Creek near here today.

Driven by Frank Young Parker, 28, of Alexandria, Va., the truck was waiting to be checked in. The trailer had not quite cleared the Virginian Railway grade crossing.

Parker heard the whistle of a train. He immediately shoved his gears in reverse and got the trailer off the tracks. But the train struck broadside and knocked the cab loose. It landed about five feet from the trailer and caught fire. Parker was rushed to a hospital with second and third-degree burns.

Witnesses said Parker's action probably saved lives.

OMAHA WORLD-HERALD P.M.
November 30, 1951

ICC Calls Whinnery as Witness in Hearing

Traffic Inspector Jean C. Whinnery has been subpoenaed as a witness next week at an Interstate Commerce Commission hearing at Washington.

The ICC is hearing requests of several major truck lines for permanent authority to transport explosives and ammunition over highways and through city streets. The inspector will oppose the requests.

The hearing is a continuation of one held recently in Chicago which the inspector also attended as a witness.

MILWAUKEE JOURNAL
December 2, 1951

Set Truckers Hearing on Hauling Explosives

Applications of nearly 60 major trucking firms for permits to haul explosives will be considered by the interstate commerce commission at a hearing scheduled Jan. 7 in Chicago, according to the ICC.

Shipping of explosives has been almost exclusively railroad business in the past, but the motor operators want permission to compete. About 10 of the applicants propose to operate in Wisconsin.

City and state attorneys will attend the hearings to insist that proper safeguards be established. The American Automobile association is opposing the truck permits on safety grounds.

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Motor News DECEMBER, 1951

SABOTAGE HINT STIRS HEARING ON EXPLOSIVES

Experts Explain Dangers In Truck Transport Over Vulnerable U. S. Highways

Trucking companies seeking Federal authority to transport dangerous explosives on the highways propose to move cargoes that can be exploded by fire, collision impact, friction, sparks, or even electrical discharges, testimony in the continued Interstate Commerce Commission hearing, brought about by the Chicago Motor Club, disclosed.

The greatest threat to explosives and munitions hauled in trucks would come from the possibility of fire, Dr. Melvin A. Cook of the University of Utah said in testimony before the hearing on the application of more than fifty trucking companies seeking express authority to haul dangerous explosives over the public highways. Dr. Cook was called as a witness by the American Automobile Association, a protestant in the case.

Fear Load Sabotage

Noting that "the simplest, most efficient and most sure way to produce an explosion in any explosive substance is, of course, by the intentional use of a detonator" the witness pointed out that shipment of explosives in trucks "from this viewpoint would present many opportunities for sabotage."

Truck transportation of explosives always faces the serious threat of explosion should gasoline be set afire, he said.

"The situation common to truck tractors, in which the gas tanks and explosive cargo are in very close proximity, provides an added and serious explosion hazard especially whenever the truck is involved in a wreck, for even if the cargo does not explode by impact, or shock, or friction, the hazard remains that a fire will break out in the gasoline and thereby involve the explosive cargo," Cook added.

The expert asserted his opinion that because of the trend today toward more powerful and more hazardous explosives, and the nation's greater capacity for producing explosives, "the hazard involved not only in transportation but also in the manufacture and storage of all types of explosives will increase rather than decrease as time goes on."

Cites Disaster Dangers

He asserted that "an explosion of a 20,000-pound truckload of explosives" might completely destroy or at least render temporarily useless "any bridge in the country, including such bridges as those across the Missouri, Mississippi and Ohio Rivers." He likened the results of any explosion of a truckload of munitions "in or adjacent to an oil refinery" to the Texas City, Tex., disaster of April, 1947, when a ship fire detonated a load of fertilizer grade ammonium nitrate. Any factory located 700 to 2900 feet from the point at which a 20,000-pound truckload of munitions exploded, Cook said, "would suffer serious damage and might be completely demolished.

"If a school building were within this range," he added, "the consequences of the explosion might well be catastrophic. The fatality rates for pupils and teachers involved would probably be high, dependent upon the proximity of the explosion."

Matthew C. Sicluki, director of Safety and Traffic for the Chicago Motor Club, testified that U. S. 6, one of the routes requested to haul explosives in Illinois between Iowa and Indiana, has: (1.) 23 places where "no passing zones exist." (2.) 11 sharp curves where critical speeds of less than 35 m.p.h. have been posted by the state. (3.) A daily average volume of 2,180 vehicles. He said that a recent study of the 3,000-mile system of Illinois highways showed that from 1930 to 1950 there has been a 62% increase in vehicle registration and a 128% increase in use of Illinois highways during that time. He emphasized that 85% of the concrete highways in Illinois are old and inadequate and require rebuilding either now or in the near future.

PHILADELPHIA INQUIRER, DECEMBER 11, 1951

Truck Perils Enough—Bar High Explosive Cargoes

Those who travel main highways regularly know what it is to be intimidated and half-frightened to death by trailer-trucks.

The wanton killing of a woman on the Lincoln Highway last week by a truck which previously had sideswiped a parked car, then ran her and her husband down and tore away without stopping, should shock the authorities into swift and drastic action.

This exhibition of highway ruthlessness comes at a time when trucking interests are petitioning the Interstate Commerce Commission to permit them to haul explosives such as ammunition, high blast charges and mines. They haul certain limited loads of explosives now, but this new proposal has met strong opposition from State Highway and police officials, motor clubs and citizens.

Whether the trucking interests should be permitted to add this new menace to those which already drench death upon our highways may be judged from the following record of just the past month:

Dec. 7—A trailer-truck jackknifed on City Line avenue and catches fire.

Dec. 7—Two women killed near Bordentown, N. J., in crash with trailer-truck.

Dec. 6—The Butler pike was blocked when a Bridgeport trailer-truck made a sharp turn, spilled its big load of asbestos, snapped an electric pole and wound up in a field.

Dec. 5—Two were hurt when a trailer-truck rammed a car near Pottsville.

Dec. 1—A trailer-truck made a bad turn, upset and dumped five tons of sheet metal in the yard of a Folcroft home.

Dec. 1—Power to 10 communities was cut off when a trailer-truck loaded with steel hit a pole and overturned near Reading.

Nov. 30—A trailer-truck ran out of control near Tamaqua, crashed through three houses.

Nov. 29—A trailer-truck smashed into a bridge at Strafford.

Nov. 24—A Manayunk man was killed by a hit-run trailer-truck.

Nov. 21—A trailer-truck upset near Scranton after knocking down a power pole and smashing into a retaining wall.

Nov. 17—A Paoli man was burned to death, when two trailer-trucks collided on the Pennsylvania Turnpike near Carlisle.

Nov. 7—A trailer-truck tore out four guard rails, rolled down an embankment and barely missed wrecking the Reading Railroad station at Shenandoah.

Here is just one month's record in the Pennsylvania-New Jersey area alone.

With this evidence we leave it to the jury of our readers whether trailer-trucks should carry high-powered explosives—and whether they should be permitted to continue to behave like "bullies of the road!"

Hawk-Eye Gazette

Added Highway Hazard

The country is becoming aroused over the growing disposition of trucking companies throughout the nation to engage in the transportation of explosives over the public highways.

Vigorous protests were made this month before the federal interstate commerce commission by representatives of the American Automobile association, railroad representatives, legislators and many others in public and private positions. The city of St. Paul, through its council, adopted a strong resolution in opposition to transportation of explosives. Omaha sent a representative to protest before ICC.

It is contended that congested highways already have attained an all-time record for accidents . . . that presence of explosives on the highway would add further danger and terror . . . that havoc-wreaking possibilities would cease.

Some transportation of high explosives has existed for a long time. Trucks so labeled have trundled in and out of the Iowa ordnance plant here since early days of the war. These pass through downtown Burlington when crossing MacArthur bridge and have caused many to be concerned, especially in winter months when streets are hazardous.

The railroads have long maintained an excellent record for public safety in transporting thousands of tons of high explosives. Very few explosions have occurred and then only in cases of wrecks. One such occurred in Colorado a few years ago.

However, highway explosions are not uncommon. Gasoline transports catch fire and blow out every now and then. In oil-producing country, it is not uncommon for nitroglycerin to explode. Munition-laden trucks unquestionably would increase these highway hazards.

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6 ILLINOIS STATE JOURNAL FRIDAY, DEC. 7, 1951

Opposition To Truckers Carrying Explosives Told

By ROBERT W. RICHARDS,
Copley Press Leased Wire.

Washington, Dec. 6—Mounting opposition to an application by the truckers lobby for a permanent license to carry high power explosives on the public highways was summarized before the interstate commerce commission thus:

1—The toll of traffic accidents and deaths is growing steadily in all parts of the country. Injection into the stream of traffic of probably the most dangerous commodities in modern commerce can have no effect but to increase the hazard potential.

2—Highways generally are in bad condition from the pounding they suffered during war II when truck overloads were permitted and are now inadequate for present traffic volume. This inadequacy increases the probability of traffic accidents and magnifies the menace of moving dangerous explosives in the present traffic stream.

3—The combination of one unit of explosives with the fuel (gasoline or diesel oil) necessary to propel the truck carrier greatly increases the possibility of catastrophe. While some explosives detonate on impact, experts have shown that all such explosives will explode from fire. Close proximity of fuel tanks to explosive cargoes enhances the danger from fire.

4—It is not practical for explosive laden trucks to bypass cities, towns, and other congested areas. Main highways are literally the main streets for thousands of cities and towns.

5—While the interstate commerce commission has assumed responsibility for the safety of these operations, it has virtually no facilities for administering and enforcing safety regulations, and state by state enforcement is admittedly poor, with some few exceptions.

The last appropriation of Congress virtually eliminated funds for the safety section of the I.C.C. bureau of motor carriers which was deplored by Com. Hugh W. Cross, former lieutenant governor of Illinois and chairman of the state's highway safety commission during 1948-49, as unrealistic. Thus the I.C.C. is being importuned to permit operation over public roads of the individual states of a flood of dangerous commodities when it has no means to police the safety of such an operation.

6—The security problem involved in truck hauling of TNT, other explosives is real. It affords a relatively simple opportunity for sabotage with dire consequences and the proper screening of drivers is almost impossible.

7—Even a minimum degree of safety in the operation of trucks carrying explosives requires police escorts, not only on rural roads but through cities and other heavily populated areas, over critical bridges and through traffic tunnels.

Yet cities and states are unable to assign adequate police protection for such perilous convoys without taking them away from other necessary duties, since nearly all such political subdivisions of the nation are undermanned and the manpower shortage during rearmament has made the policing problem doubly acute.

Illinois has an especial interest in the pending hearings on the petitions of some 50 major trucking operators for making permanent temporary permits under which trucks have been allowed to haul explosives over certain designated routes since war II.

Several highway carriers are carrying explosives now from the Joliet and Rock Island arsenals, among the largest munitions producers in the world. Commissioner Cross noted. The I.C.C., he reiterated will be guided in its decision by the facts, but with the safety of the motoring public given utmost consideration.

The governors conference, held last October at Gatlinburg, Tenn., found serious objections to any long range approval to truckers to transport explosives. There was some question, the state executives decided, whether the Korean war emergency should serve as excuse for exposing traffic to such a hazard.

But the states, though sole owners of their highways, surrendered the power to bar explosives from their thoroughfares when they accepted federal aid in construction of their roads. Only the federal government has the authority to say what may be carried over the highways, the governors noted.

Evening World-Herald. Omaha, Fri., Dec. 14, 1951.

The Case of Nation's Highways and Transport of High Explosives

By Fulton Lewis, Jr.

Washington—The Interstate Commerce Commission is sitting on a powder keg. Sixty trucking concerns around the country are seeking permanent authority to transport high explosives on the nation's highways.

Some trucking firms now have temporary or emergency permits to haul such dangerous cargoes, as a result of the defense buildup and the inability of railroads to transport the load. In seeking permanent rights, the trucking firms are asking for an extension of the routes to be used. Almost every state would be affected if the ICC rules favorably on the applications

The executive committee of the Governors' Conference recently protested to the ICC regarding the trucking request. Other official protests have come from the American Association of Motor Vehicle Administrators, the International Association of Chiefs of Police, the American Association of State Highway Officials and various state and local national highway safety committees. Representatives of Parent-Teacher organizations also are protesting.

If granted the authority, trucks would haul bombs, shells, powder, poison gas and projectiles loaded with radioactive materials.

* * *

Traffic accidents continue to increase and the addition of explosive-laden trucks on the nation's main highways will increase the hazards encountered by drivers. Many cities and other congested areas cannot be by-passed at present.

State and municipal governments are concerned over the possible consequences of sabotage, and the effect on critical bridges if an explosive-laden truck blew up. Local police departments, to assure safe passage of such vehicles, would have to escort trucks over both rural and city roads. Police of various points in the country already have notified the ICC that they do not have an adequate force for the job.

Under present laws states are the sole owners of their highways, yet the Federal Government through the ICC has the power to say what will be hauled on the state-owned roads. At the same time, the state governments are responsible for the safety of their highways and their citizens. The ICC accepts no responsibility for disasters resulting from its own orders on what may be hauled on the highways.

* * *

Those protesting do not argue that some explosives have to be hauled on the highways. Railroads do not reach some points, and are loaded to capacity in any event. Thousands of tons of dangerous cargo now are transported by highway, under temporary permits, between military installations and munitions plants. The Defense Department has a large scale shell reloading program under way. State and local officials have learned to live with this hazard, but they break out into a bad case of the jitters when they think about a mass granting of permits for hauling shells and bombs all over the country.

These officials want to be notified whenever an explosive-laden truck is headed for the state border; they want the trucks plainly labeled, with strict regulations on time of transport, literacy of drivers and designated routes.

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MILWAUKEE JOURNAL
December 15, 1951

Explosives on the Highways

Shipment of explosives, a ticklish problem by nature, becomes more so as the nation steps up armament production and works against time. Now in agitation is the question whether the highways shall be thrown wide open to this precarious purpose.

Most explosives now travel by rail, but a group of nearly 60 interstate truckers have asked the interstate commerce commission for permanent authority to move in on the business. Several would include Wisconsin in their authorized territory.

The department of defense supports the truckers' bid, presumably on a plea of military necessity. The railroads and the railroad unions naturally oppose it, as a matter of economic interest to them. Of more concern to the general public are the objections raised by the American Automobile association on safety grounds.

The city of Milwaukee and state of Wisconsin will be represented at the ICC hearing in Chicago next month. Initially, at least, they will not take sides but will seek only to make sure that the ICC pays full attention to the public interest in protection of life and property, however it decides.

These things must be considered: Is trucking of explosives more dangerous than hauling them by rail? If so, is it nevertheless absolutely necessary to use both means, even though the highways are already overcrowded? If so, what measures will give maximum protection to people, bridges, factories, schools, homes?

Milwaukee already has a strict ordinance. Explosives may move over city streets only upon a permit obtained for each load from the fire prevention bureau, only between midnight and 6 a.m., no more than 500 pounds to a load, over prescribed routes escorted by squad cars, with trucks clearly labeled. About 30 permits have been issued this year.

Interstate truckers are subject to safety regulation by the ICC's bureau of motor carriers, but one of congress' shortsighted "economies" has left the bureau virtually without funds and personnel. The railroads, on the other hand, jointly operate their own Bureau of Explosives.

Inside Wisconsin, the industrial commission has a safety code for handling of explosives, and also adopts the ICC rules. It lacks personnel for systematic enforcement. Whether regular police and highway patrols may enforce these rules, and could do it adequately, are debatable questions.

Milwaukee's traffic engineer, Howard E. Egner, coined a classic statement of the bureau when he advised the city attorney not "whatever dangerous types of traffic can be kept off city streets would be decidedly in the interests of safety." It certainly would.

If, nevertheless, the ICC decides it must open the gates wider, both the federal and state governments must provide the most generous enforcement of safety measures. To do that, both have big gaps to fill.

ELIZABETH (N.J.) JOURNAL
December 15, 1951

Delaware Munitions No Doubt

Even while Governor Driscoll is still "viewing with pride" his new Turnpike new storm clouds arise. Truck operators have asked the Interstate Commerce Commission for permission to haul explosives on the public highways.

No wonder the Board of Works remembered in the nick of time to scratch from the Zone D ordinance the word "explosives" which they almost overlooked. But, then, we shouldn't be concerned about any "local" explosives finding their way onto the brand new pike. If we do find any explosives riding over the Governor's "Dream Road" they will probably have to be Delaware explosives or New York explosives. Even without any load of explosives you can hear an explosion every time an Elizabeth motorist runs his finger down the local toll list for "Nightmare Alley." South of the Raritan it's "bargain basement" prices all the way to Delaware. But, you cross the Raritan northward at your peril. Up this way no motorist with a package of matches in his pocket dares look at what it costs to get from here to the George Washington Bridge for fear of an explosion.

That would appear to save what is left of the old town from being blown up by some truck blowing up on the new. "Dream Road." But what about Route 25? Didn't that truck of inflammable liquids that caused so much damage in the Holland Tunnel awhile back pass this way en route to Jersey City?

Explosives and dangerous inflammables have no right on the public highway. Even allowing for the greatest possible exercise of care in operation of the trucks concerned there is always the lurking danger of collision which can touch off a blast. After that it's just too bad but you know how it is—"progress." "corridors." and all that sort of stuff along with regrets placed on the wrong side of the explosion.

TUCSON (Ariz.) STAR
DECEMBER 8, 1951

Voice of the People . . . . . .

This column is open for the opinion of readers. Letters should be confined to 300 words, be free of libelous matter and must carry signature and address.

TRUCKLOADS OF EXPLOSIVES

Editor the Star:

I have been advised that 60 trucking companies have applied to the Interstate Commerce Commission for permanent certificates of public convenience and necessity, granting them the right to haul all types of explosives over public highways. In the opinion of men who have spent their lives in transportation, the granting of such a right will create a greater public hazard and more serious threat than could come from any enemy country.

Our enemies will have first to deliver their bombs, then explode them. Trucking companies propose to drive their rubber-tired bombs down the highways built and owned by the people, past the front doors of their homes, their schools, churches and business houses.

Bombs will not have to be delivered—they will be here. All that is needed is to explode them, and anyone who does not know what that means should get a report of what the steamship companies did to Port Arthur, Texas. Or refer to the Arizona Daily Star of Nov. 30 and read the story of a crossing accident at Kalamazoo, Mich., when a Michigan Central passenger train and a gasoline truck collided. That was bad enough, but suppose the truck had been loaded with high explosives! Everyone on the train and everyone in the near vicinity would have been killed. And don't imagine that a train must be involved to cause an accident. One truck can hit another just as hard as a train can, or one of our speed demons, driving 60 miles or so an hour, can hit a truckload of explosives plenty hard to set it off.

It seems that if the trucking companies had any conscience they would be satisfied to wreck every highway in the United States, without going to the extreme of trying to kill all the people who built the roads.

I have recently driven the highways from the west coast to the east, and from Illinois to the gulf, and have found not one where trucks were left the roadway safe for the people to enjoy.

W. W. HOLDEN,
631 North Third avenue.

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The Herald-News, Joliet, Illinois, Sunday, Dec. 30, 1951

Voice Concern Over Movement Of Explosives Over Highways

Chicago.—"More munitions are moving by truck than ever before," more than most people realize," Railway Age weekly magazine published for the railroad industry reports in its current issue. "Creating a serious danger on our public streets and highways. These are real dangers which have become the cause for nationwide alarm."

The source of the alarm is a petition now before the Interstate Commerce commission by some 60 trucking concerns seeking permanent authority to transport explosives, munitions and other dangerous articles over the public streets and highways. The ICC prohibits many truck operators from handling such dangerous articles. They are usually moved by railroad under very strict rules and regulations, over routes avoiding population and industrial centers.

"THE POLICING of highway movements of explosives is, in actual practice almost non-existent," the Railway Age article continues. "No effective method has yet been found for such policing other than thru the medium of the local police. They in turn have their problems trying to cope with the situation.

"Some cities have ordinances requiring fat trucks carrying dangerous articles be escorted thru town by a police officer over a prescribed route. At least one such city (Omaha) is complaining that this is not service it can afford, as it is becoming an more time and an many men that real police have been forced to neglect other important traffic and patrol work."

"The record is loaded with examples of the dangers present in trucking dangerous commodities. These examples, together with the steadily increasing accident rate and constantly mounting highway traffic volume have caused responsible state highway officials, the American Automobile association, and other organizations concerned with the preservation of the public highways, to oppose the movement of munitions by highway in all but the most essential cases. The A.A.A has also called for more stringent regulations and control of existing highway movements of munitions and explosives."

"STATE HIGHWAY officials are concerned because the increasing amount of damage being done to highways by regular motor trucks is bad enough. They want to know who will pay for the damage if a truck load of explosives blows up. The state of New Jersey points out that the damage from a few such accidents could easily bankrupt the state highway funds, unless compensation for the damage can be recovered."

MUSKOGEE (Okl.) PHOENIX
December 22, 1951

Traffic Halted

Butane Truck Fire Finally Controled

A transport truck's backfire tied up traffic for five or six hours on U. S. 62 about two miles south of the Haskell "Y" west of Muskogee Friday.

The truck was pulling a trailer which contained [illegible],000 gallons of butane, and the backfire set fire to the highly inflammable fuel and gave rise to threat of a gigantic explosion

Although the truck and its tanks burned fiercely, the really big explosion never did take place, but traffic along the heavily-traveled road logged down until the fire finally was put out.

One lesser explosion did send a perfect black smoke ring billowing hundreds of feet in the air, but the truck driver, Woodrow Rogers of Okmulgee, expressed belief that only his gasoline tanks had burst.

Was Driving North

Rogers said he was driving north at about 1 p.m. when his motor died, and when he started up again, the backfire set the butane ablaze. Rogers was driving for J. A. Waddle, Butane distributor at Okmulgee.

Rogers said he called the Muskogee Fire department, which would not go near the gurgling, groaning load of hot fuel until about 4.15 p.m. At that time, they put out the fire, highway patrolmen reported.

Traffic Bogged Down

Meanwhile traffic bogged down along the highway. Trucks, buses, passenger cars and pickup trucks lined up at each side of the blaze.

Okmulgee firemen strongly cautioned everyone against getting any closer than about one - quarter of a mile to the flames, and vehicles which approached too closely were ordered back.

"Traffic was routed around the fire on section line roads until a heavy gasoline transport crushed a bridge.

Highway patrolmen then directed traffic along alternate routes which required many more miles, but which did not involve the threat of an explosion at any time.

Highway Opened

Shortly after 5 p.m., what was left of the Butane load was being loaded into trucks, and patrolmen said the highway would be opened very soon.

At height of the blaze, big streams of fire shot out of ruptures in the butane tanks under high pressure.

FORT WAYNE (Ind.)
JOURNAL-GAZETTE
Dec. 26, 1951

Truck, Deadly Cargo Rolls On Icy Roads

A truckload of explosives which rolled into the city yesterday over precarious highways, was given a police escort to U. S. Highway 30 west after the driver made a check on road conditions.

Motor Patrolmen Jack Adair and John Cook stood by while the driver, en route to Joliet, Ill., checked highway conditions and established his route west from Fort Wayne.

The dangerous cargo was loaded in Alabama, officials were told. The truck driver encountered hazardous road conditions in central Indiana and hesitated to continue before contacting authorities about road conditions.

CHARLOTTE (N.C.) OBSERVER
December 29, 1951

Should Truckers Haul Explosives?

A MATTER of vital interest to the public but which has had comparatively little public attention is the application of American truck lines for authority to transport explosives, including ammunition, over the public highways and streets. The Interstate Commerce Commission has been conducting hearings on the application since September 17.

Of course the railroad interests have been opposing the move. Cynical persons might assume that they are doing so only because they would lose business to the truck lines. But they have strong argument that should appeal to the general public, which has just as vital an interest in the matter as have the railroads.

Presumably local short-haul transportation of explosives is not involved. Truck transportation is necessary where railroad facilities are not available. But the issue seems to be whether the truck lines are to be allowed to haul explosives in competition with the railroads.

Transportation of explosives by rail involves little or no danger to the general public, in the cities and towns or elsewhere.

But truck loads of high explosives rolling along the traffic-congested highways and streets, where a crash or collision is liable to occur at any time, is a somewhat different matter.

To bring the matter close home to many people in Charlotte, how would they like it if explosives-laden trucks were permitted to roll along traffic-congested Tryon street, through the heart of he retail business district, during all hours? How would those who have homes or business places along Graham street, Seventh street, Morehead street and Independence boulevard like to have loads of high explosives hauled along those thoroughfares during the day and night?

Many of the truck-line highways, over which most explosives would be hauled by truck, pass through the congested retail districts and the residential sections of the cities and towns.

The question of authorizing the truck lines to haul explosives is one in which the public as well as the truckers and the railroads has a vital interest.

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Plaintiffs' Exhibit 62-M

EXPLOSIVES

I-716-62-H

135

Pl- C2 M

TOLEDO BLADE
Jan. 1, 1952

4 Hurt In Crash Of Auto, Truck

Load Of Ammunition Remains Unexploded

From The Blade Correspondent

DELTA, O., Jan. 1—Four persons were injured, three critically, when their automobile and a truck carrying explosives collided Monday on fog-covered State Rt. 2, one mile west of here.

Traffic was detoured for 4½ hours until wreckers from Toledo succeeded in righting the truck, which had partially overturned in a ditch.

3 Injured Critically

In critical condition in Detwiler Hospital are John X. Zorawicki, 28, Delta, driver of the car, skull and rib fractures and chest injuries; Lupe Jimenez, 44, also of Delta, head and chest injuries and a fractured leg; and his wife, Josephine, fractured leg and head and chest injuries. Antonio Flores, another passenger, suffered lacerations of the mouth. Two other passengers in the car were not injured.

State highway patrolmen from the Defiance post and Fulton County sheriff's deputies said the truck driven by David R. Clouse, 27, Chicago, was attempting to pass another vehicle when it collided with the car. Neither Mr. Clouse nor a passenger were injured.

Traffic Detoured

Traffic was detoured after Mr. Clouse warned officers that there was a possibility of an explosion if the truck overturned. James Barron, Delta fire chief, said the truck was carrying ammunition, believed to be consigned to the Navy.

Mr. Clouse was cited for passing another vehicle without an assured clear distance and was fined $50 and costs by C. C. Ackerman, Wauseon, justice of the peace.

100

THE JERSEY JOURNAL, Jersey City 6, N. J.
TUESDAY, DECEMBER 11, 1951

Keep Explosives Off Highways

The hauling of explosives and inflammable cargoes on the nation's highways is a mounting hazard as traffic volume increases. How great this menace is is found in news reports from time to time. The very damaging fire in the Holland Tunnel some time ago, when a truck loaded with inflammable liquids ignited, is a vivid example.

Now truck operators have asked the Interstate Commerce Commission to ignore the munitions-hauling safety record of the railroads and give highway freighters authority to haul explosives on public highways.

The various unions of railroad employes have registered opposition to the applications, as have the American Automobile Association, the Association of American Railroads and governors of several states.

True, opposition of railroad workers and executives is, to some extent, inspired by efforts to protect personal interests. But, there cannot be such a bloc to inspire governors and the nation's biggest automobile owners group.

Railroads haul explosives under exacting supervision by the Bureau of Explosives, which operates largely as a safety agency of the I. C. C. itself.

Trucks, no matter how carefully designed for hauling explosives and carefully loaded, once they join the traffic stream of any highway are subject only to the control of their drivers and, worse, are exposed to countless potential unseen dangers because of the thousands of other drivers, a certain percentage of which are incompetent and their vehicles defective.

Highway dangers are great enough without adding loads of munitions as potential lethal cargoes.

28-61

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Plaintiff's Exhibit 62N
Page One

HIGHWAY TRANSPORT 9-423-62-H

AAA SAYS EXPLOSIVES ON HIGHWAYS THREATEN SAFETY

Prospective movement of additional millions of pounds of explosives over the highways holds a potential of disaster calling for the most careful study, the American Automobile Association said in a statement issued on September 19. Pointing out that forty-eight trucking firms have applied to the I.C.C. for authority to haul ammunition and other dangerous articles over the public roads, Lou E. Holland, of Kansas City, Mo., President of the AAA, said that his organization has asked permission to intervene in the case.

"The AAA," he said, "is strongly urging a sixty-day postponement of the hearings in order that a thorough investigation might be made by the AAA and other organizations concerned with public safety."

"Our preliminary study," Mr. Holland added, "indicates that at the present time a few motor carriers have either permanent or temporary authority to transport explosives. Granting of the pending applications would undoubtedly result in a greatly expanded volume -- running into hundreds of thousands of tons -- of dangerous articles being carried in our traffic lanes.

"Our concern is multiplied by several significant facts: (1) The highway safety problem is more critical than ever before on our overcrowded and inadequate highways; (2) Congress has virtually wiped out the protection afforded through the safety operations of the ICC's Bureau of Motor Carriers, the one unit which exercised Federal control over the safety precautions required of interstate truckers, and (3) it comes at a time when major highway modernization projects are almost at a standstill because of failure of the

Government to provide necessary steel. A recent AAA survey covering 36 states, showed that 531 projects were either suspended or delayed because of lack of steel.

"Wholesale violations of laws regulating truck loads, together with such accidents as the explosion and fire in the Holland Tunnel in May, 1949, indicate that self-policing by the trucking industry can not be counted on too strongly. A spot check of vehicles entering the Holland Tunnel in the weeks following the fire showed some 100 violating the safety rules, while the vehicle causing the accident was carrying more than 48 times the quantity of a dangerous chemical than was permissible.

"As long ago as 1935, the National Fire Protection Association expressed alarm at the growing quantity of highly flammable liquids and other dangerous materials moving over the highways and pointed out that not only are life and property on our highways seriously exposed, but our homes, hospitals, theaters, commercial and manufacturing establishments, as well as schools and churches, might be greatly endangered.

"In view of all these circumstances, the AAA feels that the proposal to permit a vast number of trucks to haul explosives over many routes from coast to coast poses a public issue of vital importance that deserves the most careful scrutiny before a final decision is reached."

TRANSPORTATION OF EXPLOSIVES ON HIGHWAYS

The ICC in a report and order made public on September 21 denied the application of the Davidson Transfer & Storage Company and seven other trucking concerns, operating along the Atlantic seaboard from Massachusetts to Virginia, to extend their authority as common carriers

of general commodities so as to permit them also to transport explosives within the categories of "dangerous" and "less dangerous". The Commission found that the applicants had failed to establish that the proposed operations are required by present and future public convenience and necessity.

"Dangerous explosives," the Commission said in its report, "comprise a classification of commodities, the transportation of which must be surrounded with safeguards for the protection of life and property. Authority to transport these commodities should be granted with extreme caution, only upon evidence of a real and existing need for such service. Such evidence is lacking here, and the applications should be denied."

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Plaintiffs' Exhibit 62-O

THE WYOMING EAGLE

October 21, 1961

PL 62-O

Truck Group Votes Curb On Explosives

CHEYENNE, Oct. 21.—(AP)—The American Association of State Highway officials is opposed to the hauling of any more explosives than is absolutely necessary," Wyoming Highway Superintendent R. Bromley said Wednesday.

Bromley said the association discussed the problem at its convention last week. A resolution was adopted opposing the hauling of any more explosives than necessary on the nation's highways.

A number of applications are pending before the ICC for permits to haul explosives by trucks.

Mayor Sam Tully of Rawlins last week started a drive to prevent truckers from moving explosives through Rawlins. He wrote Gov. Frank A. Barrett, highway department and Union Pacific railroad officials asking them to protest to the ICC against granting any more permits.

28-63

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Plaintiff's Exhibit 63

A. L. SHULTZ
POLITICAL NEWS
Hotel Jayhawk
TOPEKA, KANSAS

November 12, 1951

Mr. Joseph H. Hays, Counsel,
Association of Western Railways,
Union Station Bldg.,
Chicago, Illinois.

Dear Mr. Hays;

You may be interested in the enclosed column, which will be released November 15 to papers using our syndicated release. I hope it has taken the right slant and will be productive of a bit of good.

Was in Chicago a few hours several weeks ago, but had to catch a train for Dayton and missed seeing you. Trust we will be getting together for a meeting sometime soon.

Please call on me if I may be of service any time.

Best regards,

Very Sincerely,

ALS/e
encl. 1.

Plaintiff's Exhibit 63A
Page One

RELEASED FOR PUBLICATION THURSDAY, NOVEMBER 15.

(Special poltical letter to The_____by A. L. Shultz.)

Topeka, Kansas, November 14:---Kansans are coming to a sudden realization, that life and property are cheap pawns in a sudden, unrestricted surge to move thousands of tons of explosives in trucks over state highways and city streets, in a 24 hour daily menace to every parent, school child, home and industry.

Around the clock, mammoth boxcar type trucks carry loads of death dealing cargo at top speed. In flights across the state they pass defense industries, schools and thousands of private homes. The explosion of one of these agencies of destruction, through collision on the highway or with a train at a grade crossing, would deal death to scores of defenseless men, women and children, and cause millions of dollars of property loss.

Of course, the great state of Kansas has done something about the situation. Under a law, which permits the highway department and other agencies to lend a helping hand to all manner of safety campaigns, steps have been taken. There is a regulation requiring carriers of sudden death to display "Explosive" signs on those heavily loaded, highway smashing transports. Obviously, motorists have slight opportunity to read those warning signs on a truck's death defying flight down a highway at 50 or 60 miles an hour. There is a meagre chance for a citizen to avoid a sudden trip to the Great Beyond if an explosive laden truck goes into a ditch, collides with another on-rushing vehicle or a train loaded with passengers. A car load of safety slogans in a class room or along the highway leading to the school house, wouldn't prevent a tragedy which could kill or maim

every child if the explosive loaded truck hit a defective road spot and crashed near the building.

Until recently owners of family pleasure cars have merely struggled under back breaking tax loads and worried about increased traffic counts. Now their problems are increasing. They have seen their once smooth, beautiful travel lanes battered to dust with increasing weight loads. There isn't a school child in America who can't give you the correct answer to that problem.

They know that these once nice, durable all weather highways, which dad and mom helped build, carry the youngsters to school, take produce to market, get the family to church and picture shows 12 months of the year. They know that now dad and mom are paying more than their share of the cost for thicker, heavier roads, which the family did not demand and does not need. The situation applies not alone on the farm. It is a problem of increased construction and maintenance cost for every family car owner in every small town and every large city.

From editorial rooms in Kansas and throughout the nation are coming sharp, pointed words of criticism of lax controls and wanton abuses of public highway privileges by truckers, who risk life and property for personal gain, with their loads of explosives.

Clyde M. Reed, Jr., whose Parsons Sun is in a vulnerable spot near an ordnance plant, took a lead in demanding that heavily loaded, hard driving carriers of death and destruction be removed from highways. The fear of impending devastation has seized individuals and groups with a realization that "It Could Happen Here." Those people are not likely to be happy with mere regulations. They want the menace removed.

Clearly the present directive for an "Explosive" sign on a truck carrying a capacity load of "Boom! Death!" is not in the true spirit of a rousing safety speech in the town hall. Amazingly, tho, the frantic distribution of thousands of truck loads of explosives continues, not only in this vitally vulnerable midwestern area, but throughout the nation. That, in spite of the record of collisions of explosive loaded trucks with trains at grade crossings and with vehicles on highways across the country. It could happen in front of your home. It could wreck your office, store or industry. It could kill your child in the class room or at play.

Quite unbelievably, 49 major truck companies, with a lust for profits, have applied to the interstate commerce commission for authority to haul munitions over public streets and highways from coast to coast. At the recent conference of governors in Gatlinburg, Tennessee, a resolution protesting use of highways for hauling explosives was due for consideration. Nobody really explained why this expression favoring protection of life and property never appeared for full dress discussion.

Railroad brotherhoods have protested use of highways by explosive laden trucks, as unwarranted hazards for trainmen and passengers.

In keeping with those moves, the national gathering of the American Automobile Association in Kansas City recently voiced approval of a speech by President Lou Holland, who deplored lax enforcement of truck weight laws and rapidly deteriorating highways.

Recently "Labor", a powerful defender of the rights and interest of wage earners every where, spoke from its editorial watch tower in Washington. "Juggernaut trucks take fast rising toll of lives and limbs on roads," it

asserted in a page-wide streamer. Then it gave casualty figures assembled by the Interstate Commerce Commission---16, 978 truck accidents in 1949, a 90 percent increase since 1941. Those 1949 accidents brought 1, 168 deaths, 9, 901 injuries. "Labor" said there were 4, 912 bus accidents in 1949, with injuries and deaths more than double those recorded in 1941. The publication recited that the powerful, highly financed truck-bus lobby succeeded in chopping off an ICC congressional appropriation, in an effort to wipe out the department's safety division and suppress reports of truck bus accidents.

It all carries a sad story to the little fellow with his family car, who faces increased problems when he goes for a pleasure trip. Some states have sought to provide a measure of safety by banning truck movements except on designated routes during week-ends. Other states are moving rapidly toward requiring exclusive truck-bus lanes, with the carriers providing their own right-of-way, construction and maintenance costs, with ad valorem taxes on the same basis as now provided for railroads.

Out in Colorado, state highway engineer Mark U. Watrous has asserted: "Our major highways are less adequate for today's needs than in the early part of World War II. Everyone directly concerned with America's highway problem knows full well how heavier loads smashed our highways during the last war. Everyone knows that not a state in the nation has recovered from that blow."

In the final analysis, the big expense load, the hazard to life, limb and property is on the little fellow. He pays for super-highways which he does not require. His liability insurance premium mounts with "Crash! Death!" records on highways, occasioned by new hazards of speeding overloaded explosive trucks, with added mortuary business provided by speed-mad reckless drivers.

Somewhere, agencies of government are failing to meet their responsibility for the protection of life and property.

Plaintiff's Exhibit 64

TRAFFIC EXECUTIVE ASSOCIATION-EASTERN RAILROADS
MOTOR CARRIER BUREAU
One Park Avenue
New York 16, New York

Dist. 1/28/52

January 22, 1952

Re: Application of Riss & Company, Inc., Extension - Explosives
Docket No. MC 200 Sub 84, and related cases..

TO FREIGHT REPRESENTATIVE AND ATTORNEYS HANDLING MOTOR CARRIER MATTERS FOR EASTERN RAILROADS

Gentlemen:

Please refer to my circular letter of January 3, 1952 , concerning the appointment of Mr. Wickes as Chairman of the Legal and Traffic Defense for the Eastern Railroads.

No objections have been made to this appointment. Therefore, as of today, Mr. L. W. Wickes is Chairman of the Legal and Traffic Defense for the Eastern Railroads, in both the Riss, and all the related cases.

Very truly yours,

F. X. MASTERSON, Mgr.

FXM/pe

Plaintiff's Exhibit 66
Page One

TO: George Hammond
cc: Swinehart, Davis, Stull, Hardy

FROM: William B. Hutchinson

ERTC WORK REPORT FOR WEEK ENDING MAY 23, 1952

I. COPY PRODUCED:

1. Hardy completed revisions in copy for speeches for H. A. Thomson, National Association Township Supervisors.
2. Hardy wrote story on New Jersey public opinion poll for auto editors from Citizens Highway Committee.
3. Stull persuaded city editor of Columbus Dispatch to work up piece on truck menace following several recent deaths on National Highway near Columbus. Result: five-pix and story that took up nearly half of page one.
4. Stull wrote release on Kauer speech for Cincinnati dailies, radio stations and wire services. Release distributed by registrar convention headquarters since Hal Cohen was handling publicity.
5. Stull wrote second day story on Kauer speech, topping with a resolution that registrars want state police freed of truck-weighing duties so they can devote more time to preventing accidents. This too went out from convention headquarters as official release.
6. Strouse completed memo on Maryland Road Test for wire service round-up.
7. Strouse accumulated Maryland Road Test material for Miller, Wheldon.
8. Kiely prepared background material for editorial comment on Maryland Road Test report.

9. Keily wrote story for Legislative Bulletin of Brotherhoods Joint Legislative board on Maryland Road Test.

II. COPY RELEASED:

1. Thomson's speeches returned to Thomson.
2. Washington office released stories on truck hauling of explosives in following papers: Asbury Park, N. J., PRESS; Altoona, Pa., MIRROR; Columbus, O., DISPATCH; Yonkers, N. Y., HERALD; Trenton, N. J., TRENTONIAN; Lewistown, Pa., SENTINEL; Columbus, O., CITIZEN, and Bridgeport, Conn., POST.
3. Strouse gave Maryland Road Test round-up memo to Jupiter and Laffan.
4. Strouse released Maryland Road Test feature to house organs.
5. Strouse sent weight-distance kits to Walter Howe.
6. Strouse released Maryland Road Test findings, etc., to all dailies & weeklies in the Northeastern part of the United States.
7. Kiely left Maryland Road Test material with editorial writers of Troy, N. Y. and Amsterdam, N. Y., newspapers.
8. Items 3, 4, and 5 released as indicated.

III. MAGAZINES:

1. Miller worked with Engineering News Record supplying them with pictures and text on Maryland Road Test and presuaded them that story worth doing again on basis of final results, despite their extensive continuing coverage over past couple of years. Status: Story running this week. Will be straight review of test results with evaluation of truckers' criticisms.
2. Lochridge worked with Leonard Paris, writer, This Week, final checking on horrible highways story. Status: Scheduled for July 6 issue.

3. Wheldon worked with Burtt Evans, managing editor, People Today; Jack Conway, managing editor, Quick; John Devaney, science editor, Quick; Richard Dempewolff, Eastern editor, Popular Mechanics, placing story on Maryland Road Test, following up requests in each case for additional material to answer questions and discussing with editors. Status: People Today has story in shape to ask go-ahead of board of editors. Quick likes but still seeking additional information. Popular Mechanics has long-range plans under consideration.
4. Miller worked with Wesley Griswold, associate editor, Popular Science, on story he is doing on engineering problems of roads, counteracting truckers' criticisms of Maryland Road Test which he received, putting him in touch with Burggraf of BPR on trip he made to Washington, Wednesday, on story. Status: Griswold, after talking to BPR and getting their side of story, very much on our side; feels truckers' attacks unfounded. Planning major portion of story on Road Test, with our pix.

IV. RADIO DEPARTMENT

1. Rieber serviced background material re Maryland Road Test as possible subject on network discussion show (You and The World, CBS).
2. Strouse worked with Dick Reiber on national forums and/or debates on Maryland Road Test results.

V. DEPARTMENT OF RESEARCH & DEVELOPMENT:

1. Supplied information to Patricia Lochridge regarding public opinion polls and leading firms.
2. Researched library copies of Transport Topics for editorials and news items of interest to Girdler.

VI. SPECIAL ACTIVITIES:

New York:

1. Kiely, at Troy, called on Dwight Marvin, editor of Record Newspapers, discussed Maryland Road Test report; made similar calls at Amsterdam and Utica.
2. Kiely, at Albany, met with Frank Columbus, legislative agent of Firemen's Brotherhood, discussed his program to assist friends of weight-distance tax at primaries.
3. Kiely met with Jim Fink of CPES in Albany to secure information on Erwin plan for assisting town roads.
4. Kiely, at Auburn, met with Senator George Metcalf and Vincent Sorenson, politician, and discussed truckers legislative report.
5. Kiely, at Seneca Falls, visited with Assemblyman Lawrence Van Cleef, motor vehicle chairman, and discussed background of truck legislation's defeat at 1952 legislature; secured copy of legislative committee's report.
6. Kiely made arrangements for meeting with top State Public Works officials on securing publicity for new weighing stations. Material on other states sent to Joseph Ronan.
7. Kiely talked with Delaware & Hudson officials on follow up with Assemblyman Fitspatrick, sponsor of Joint Legislative Highway Study commission; made arrangements to visit with D & H Albany officials next week.
8. Made arrangements for meeting with Judson Morehouse, Good Roads head, and Walter O. Howe of CPES.
9. Kiely talked with Emmett O'Brien of Gannett News Service on feature story using Council of State Governments' Report as background.

Ohio:

1. Stull suggested to PUCO commissioners that they plant enforcement agent behind Riss explosive-hauling truck and follow across state, counting number of safety and traffic violations. They bought, and plan to use information in upcoming case against firm. Arrangements also made for publicizing same.
2. Stull helped Cohen draft parts of speech for Highway Director Kauer for presentation at Motor Vehicle Registrars regional meeting in Cincinnati.
3. Stull conferred with Doug Stanfield, legislative agent of Farm Bureau to determine whom we should contact in upcoming Indiana campaign. Forwarded details to Hardy in New York.
4. Stull also furnished Stanfield with material for legislative memorandum to his agents and gave him copies of various pamphlets and booklets for his field supervisors to use in highway study courses they are planning soon.

New Jersey:

1. Hardy arranged for New Jersey Auto Owners to send out reprints of news story and editorial on Maryland Road Test to New Jersey Legislators, etc.

Pennsylvania:

1. Hardy worked with W. A. Reiter, Associated Railroads of Pennsylvania, on outlining Pennsylvania program.

General:

1. Hardy arranged for reprints of article in Ohio Farmer to be printed for distribution in Ohio, Indiana, and Pennsylvania.
2. Hardy attended regular monthly meeting of ERPC.

3. Hardy worked with office of R. J. Littlefield on gathering statistical data.
4. Hardy spoke for Tax Study Foundation before Cranbury Lions Club.
5. Marine spent two weeks in Indianapolis researching Indiana highway finances.
6. Strouse helped Hardy research AP release, spending day in Philadelphia in the process.
7. Strouse did additional work, in both Philadelphia and New York, on Who Pays for Our Roads.
8. Strouse supervised Maryland Road Test mailing to all dailies & weeklies in northeastern part of the United States.
9. Wight and Youngstrom maintained contact with government departments and agencies handling matters of client interest; reviewed daily Congressional Record, Federal Register and other government publications for items of client interest.
10. Beman followed up on explosives stories with local correspondents of out-of-town papers to check results of the two explosives stories handled from Washington office and to keep interest alive.
11. Rowley obtained information on Mr. Kermit Rykken of AAA and teletyped same to Dick Strouse as requested.

VII. CONTACTS: (Jim Marine)

1. Samuel C. Hadden, Chairman, Indiana Highway Commission.
2. Albert Wedeking, member, Indiana Highway Commission.
3. Tom Seward, Director, Indiana Highway Planning Survey.
4. Clyde Plack, Commissioner, Indiana Motor Vehicle Department
5. Paul Jensen, Director, State Department of Accounts.

Newspaper Men

1. Walter Lackrone, Editor, Indianapolis Times.
2. Bob Kellum, Financial Editor, Indianapolis News-Star.
3. Lowell Nussbaum, Columnist, Indianapolis News-Star.

Plaintiff's Exhibit 67

To: Coly Hardy

Aug. 1, 1952

From: Don Stull

Had a long phone conversation yesterday with Lewin Wickes, chairman of the traffic and law committee of the Eastern Railroads. In case the name doesn't register immediately, he's the guy who handled the truck explosives case before the ICC. I got to know him when Girdler sent me to see him during a trip to Washington, and out of that trip came our efforts in behalf of Mr. Wickes' cause in Washington.

He 'phoned me from Chicago yesterday to express his delight with the PUCO's move here in trying to get Riss ruled off the road. He suggested that if we could get the PUCO to take similar action against Riss, only aim this action at Riss' temporary authority to haul explosives, we could get their explosive -- hauling trucks off the road within a matter of 10 or 15 days. Wickes says the ICC has much more vast authority on temporary permits than on permanent permits as was involved in the first PUCO citation to the ICC.

I've already outlined the matter to Paul Deston, secretary-publicist of the PUCO, and hope to get to discuss it next week with the commissioners themselves. Wickes pointed out that although a cease and desist order had been issued against Riss explosive-haulers by the ICC, the effective date of such order has been delayed indefinitely by Riss' countering legal actions. In other words, they're still hauling. But if we can get the PUCO to act against the temporary authority we might get 'em off the road in a matter of a couple weeks.

As I said before, Mr. Wickes is very, very happy over the situation, and I feel if we could swing this latest deal, it would be a tremendous feather in our hat. I'll let you know how I make out with the commissioners.

Regards,
/s/ Don

Plaintiff's Exhibit 68
Page One

TO: George Hammond
cc: Swinehart, Davis, Hardy, Stull

DATE: August 12, 1952

FROM: William B. Hutchinson

ERTC WORK REPORT FOR WEEK ENDING AUGUST 8, 1952

I. COPY PRODUCED:

1. Kiely rewrote article for Lester Fowler's signature on weight-distance tax.
2. Kiely wrote release for H. A. Thomson's speech at Rochester and in Michigan on PAR.
3. Kiely wrote resolution for Rural Letter Carriers' national convention on PAR.
4. Kiely wrote resolution for Rural Letter Carriers' national convention on low truck fees.
5. Kiely wrote release and letter for Mayors' Conference president on trucks carrying explosives.
6. Kiely worked with State Public Works officials on weighing stations release.
7. Hardy revised report on Indiana highways and financing.
8. Sears wrote two 350 word stories for newspapers to publicize highway resolutions of Pennsylvania State Association of Township Supervisors.
9. Stull wrote letter to editor of Youngstown Vindicator answering an unfair editorial on weight-distance tax.

II. MAGAZINE DEPARTMENT:

1. Hardy worked with Magazine Department on story "Trucks Get Into Politics."
2. Miller worked with Eugene Holmes, managing editor, Engineering News-Record, placing material on weight-distance tax at account's request.

3. Miller prepared outline from material supplied by account on "Toll Roads: A Trap for Your Money?" Status: To be placed with either Mercury or Atlantic.
4. Wheldon worked with national magazine (People Today, Burtt Evans, managing editor) getting reactions of magazine following lead story on "Trucks Wreck Your Roads," conferring with magazine on best answers to various trucking associations. Status: No major trouble seen and all parties except truckers reporting themselves pleased.

III. PHOTO PLACEMENT DEPARTMENT:

1. Maher worked with photo syndicates, researching picture and caption material relating to explosion of truck in Craigs, Pennsylvania.

IV. WASHINGTON OFFICE:

1. Wight prepared special memo at Hutchinson's request.
2. Wight called on Montgomery of AAA to set up interview for Hutchinson with Mr. Rykken and Mr. Tupper.
3. Wight and Youngstrom maintained contact with government departments and agencies handling matters of client interest; reviewed daily Federal Register and other government publications for items of client interest.
4. Beman checked ICC several times during the week to see whether there were any new developments in the Riss Truck Explosives Case.
5. Beman checked with Georgetown University TV people and ordered tape of their "Highway" radio program.
6. Beman checked with New York on the Pennsylvania truck explosives accident at request of Mr. Wickes of Pennsylvania Railroad.

7. Beman had meeting with Mr. Wickes and discussed status of Riss case.
8. Beman, at request of Mr. Wickes, called Stull in Columbus to find out PUCO were doing in regard to their complaint against Riss.
9. Rowley went to ICC to review annual reports of over 500 trucking firms in Midwest to obtain necessary qualified Ohio companies for data requested by Marine.

V. SPECIAL ACTIVITIES:

New Jersey:

1. Hardy met with F. D. Stelljes and J. L. Macwithey on New Jersey Auto Owner program.
2. Hardy met with R. T. Blackson, Associated Railroads of New Jersey, on contacting people appointed to Railroad study Commission.

Pennsylvania:

1. Hardy discussed Pennsylvania plans with W. A. Reiter; scheduled meeting on September 4th or 5th.
2. Hardy worked with N. A. Thomson, Pennsylvania Township Supervisors, on speech and Pennsylvania program for weight-distance tax.

Indiana:

1. Hardy, together with Marine, set up meeting with Indiana Governor Schricker to try to get official approval for release of highway financing study.
2. As a result of job turn-down by Vic Peterson, contacted several Indiana people to arrange for interviews next week.

Ohio:

1. Stull met with new director of Ohio Highway Department, Sam Linsell and his new executive secretary, Hal Cohen, to

pave way for continued cooperation enjoyed during regime of Director T. J. Kauer, who resigned to become chief engineer of Ohio turnpike.

2. Stull conferred with utility commission to acquaint them with possibility of fast action should they renew recent action against Riss only aim it this time at Riss' temporary authority to haul explosives. Commission declined to renew action at this time, fearing it would look like they picking on Riss. Everything all set, however, should earlier action bog down in Washington delays -- or should a truck explode in Ohio, thus providing excuse for action.
3. Stull, through Paul Deaton, publicist-secretary of PUCO, alerted local dailies and wire services that Riss answer to PUCO citation due in Washington. Also through Deaton, got wire services to query Washington bureaus.
4. Stull obtained copy of Gov. Lausche utterances on weight-distance tax before State Democratic Convention and forwarded to New York office.

New York:

1. Kiely talked with Walter O. Howe, of CPES, on aftermath of State Rural Letter Carriers convention relative to 18,000-pound axle load and Highway Users Conference efforts.
2. Kiely, together with George Adams, discussed project for reactivating State Conference of Mayors' story.
3. Kiely talked with Frank Fesick, CPES field staff, on activities of County farm agents in Steuben and Chemung counties.
4. Kiely made arrangements to meet with Al Sussman of New York AAA publicity staff, next week.
5. Kiely met with Joseph Ronan of State Public Works; discussed

weighing stations and efforts of State to enforce weight-distance tax.

6. Kiely met with Frank Columbus, chairman of Joint Legislative Board of Brotherhoods and discussed political action in Monroe County. Made arrangements to meet in on Thursday in Rochester.
7. Kiely met with Lester .Fowler of Hadley, secretary of State Supervisors Association, secured his approval for story on weight-distance tax in New York.

Connecticut:

1. Marine completed highway-finance survey consisting of five charts on highway taxation, its effects and possible sources of revenue, and other tables on highway needs and practices of financing.

General:

1. Hardy, together with Marine, worked with F. W. Goodwin on report on Maine highways.
2. Hardy met with Fred Goodwin and Rose Soczzaro to discuss plans for Tax Study Foundation.
3. Strouse spent day in Boston getting Massachusetts Attorney-General to okay explosives releases.
4. Marine spent one day in Rochester on highway taxation problem.
5. Sears got up PAR background for H. A. Thomson and delivered to Hardy.
6. Sears worked on statistics of truck traffic by weight groups and their respective percentage of toll payments on New Jersey Turnpike; drafted possible story.
7. Sears started work on a booklet on weight-distance taxation and highway finance.
8. Sears worked with Strouse on mechanics of getting out ICC explosive stories.

Plaintiff's Exhibit 69
Page One

TO: PUBLIC RELATIONS COMMITTEE; COMPETITIVE TRANSPORTATION;
September 25, 1952

FROM: C. Colburn Hardy

SUBJECT: Progress report on activities

The projected program calls for intensive activity in six states as follows:

NEW YORK: Objectives - (1) Retention and amendment of the weight-distance tax.

(2) Reduction of axle loads to 18, 000 pounds.

(3) Increased fines for overloading.

Program --- 1. Continued cooperation with legislative committees.

2. Reactivation of all groups which sponsored truck tax.

3. Continued publicity through new and old friends.

4. Booklet on Weight-Distance Tax to be sponsored by the Waverly Sun and distributed to supervisory railroad personnel for use in political campaigns.

5. Cooperation with railroad brotherhoods to assure victory for Senator George Manning.

NOTE: Tax Commissioner Bates, who has consistently opposed the weight-distance tax, has indicated that he will present a substitute plan for review by railroad authorities. An analysis of what we believe this plan to be indicates that it is extremely complex, would not yield the additional revenue which other states require, and would remove the control of the trucking industry from state authorities. This matter is being watched very carefully.

NEW JERSEY: Objectives - (1) A weight-distance tax on heavy trucks to yield some $15,000,000.

(2) Improve enforcement of overloading laws by better record system and additional weighing stations.

Program --- 1. Working through friendly groups to create public support.

2. Educating state officials on details of weight-distance tax.

NOTE: No official decision has yet been made by the Associated Railroads of New Jersey, but chairman Blackson has requested that we initiate activity soon as possible. To do this a new employee, David Graham, is being indoctrinated.

PENNSYLVANIA: Pending an official invitation by the Associated Railroads of Pennsylvania, a study of Pennsylvania's highway needs and highway finances is being prepared, and applicants are being interviewed. Both the Grange and Township Supervisors have called for a weight-distance tax. Preliminary plans call for:

Objectives - (1) Hold the line on the present gross weights.

(2) Enactment of a weight-distance tax.

(3) Higher fines for overloading.

Program --- 1. To use the Grange and Township Supervisors as leaders.

2. To work with Legislative Committee when possible.

3. To build support through friendly groups.

OHIO: Both candidates for Governor, Lausche and Charles Taft, are supporting heavier taxes for trucks. In addition to working with their publicity men, our

Ohio man, Donald Stull, is continuing to harrass the truckers wherever possible. For example, the Public Utilities Commission has banned overloading, filed a protest against Riss & Co. with the Interstate Commerce Commission, and tightened truck safety regulations.

INDIANA: A campaign urging a weight-distance tax has been started under the auspices of the Indiana County Commissioners, with the cooperation of state officials. Within the next few weeks, we anticipate endorsement of this program from other groups such as the Farm Bureau, Grange, Township Supervisors, etc. The man who will handle Indiana, James Newland, starts October 1st.

CONNECTICUT: As the result of a meeting with Byoir people, Mr. Arthur Plante, assistant vice president in charge of public relations for the New Haven Railroad, was to ask the Public Relations Committee to approve an intensive campaign in Connecticut. The objective will be heavier taxes on trucks, and a more equitable system of highway financing.

With the cooperation of Bernard Kranowitz, a study of the state's highway needs and finances has been prepared for use by the Connecticut Public Expenditures Committee. This will be held in abeyance pending a meeting of Byoir people with state officials, as requested by Governor Lodge.

EXPLOSIVES: In cooperation with the lawyers and the Western Railroads, arrangements have been set up for: (1) prompt and complete news coverage of all ICC decisions regarding the trucking of explosives; (2) publicity on new aspects of the various cases now pending before the ICC.

GENERAL:

Magazines: (a) Attempting to place the Brownell article on the Maryland Road Test, turned down by Readers' Digest, in another magazine.

(b) Articles on toll roads and the weight-distance tax as a solution to the nation's highway problem are being placed.

(c) Several stories stressing the truth about P A R are under consideration by magazine editors.

(d) A series of stories on the New York weight-distance tax is to appear soon in the Trainman News.

Syndicates: (a) A feature on state action against overloading.

(b) A round-up of referenda on highway problems.

(c) A summary of highway problems confronting 1953 legislature.

(d) An analysis of how states are solving highway finance problems.

Movies: The RKO featurefilm on "America's Highways," which contains a good section on arresting overloaded trucks, is scheduled to be released in November.

Every attempt is being made to pressure the Bureau of Public Roads to release their movie on the Maryland Road Test.

In cooperation with Western Association, we are working with Clint Johnson, Maryland Highway Department, on special movie on Maryland Road Test.

Plaintiff's Exhibit 70
Page One

July 21, 1952

To: R. J. Littlefield
Chairman, Research Committee

From: C. Coburn Hardy

Subject: REPORT OF GREENBRIER MEETING

Since you asked me to substitute at the meeting, here is a brief summary of the discussion and conclusions:

1. The committee approved Byoir action in Connecticut. First step is to be a survey of highway needs and highway financing. Second step, consultation with New Haven Railroad personnel to outline legislative action. The committee was insistent that the rule of the Byoir organization be confined to publicity.

While the general technique of using a third party attribution will be continued, the original imputence for the Connecticut campaign will be based upon the public indighation about the route of the proposed truck-highway starting in Fairfield County (Bridgeport area). Mr. Bernard Kranowitz, representing the New Haven RR will act as liaison.

2. The committee recommended that the Byoir organization continue publicity on the explosives situation. It was agreed that the best step was to meet with the lawyers handling the ICC cases and plan out a full-scale campaign. This is to be done, insofar as possible, in cooperation with the Western Association.

3. After considerable discussion of PAR, it was the sense of the meeting that there should be agressive action wherever possible; the immediate projects scheduled are: (1) Distribution of the Belcher statements from the Congressional Record; using the material from the Highway Conservation League (sponsored by the Western Association); (3) Activity with groups excluded from the PAR program; farm groups interested in rural roads; downtown merchants interested in better parking facilities, etc.

It was also agreed that the Research Committee should study this whole problem of highway needs and highway financing in order to prepare as sound a factual basis as possible.

4. This research should be the basis for a "Background Memo to Editors" on the entire subject of PAR. To handle this, a committee was named: Messrs. Chaplin (Champlin), Mackie, Lyne, Littlefield and Hardy of CBA. The formula should have a constructive approach and should outline a broad program, stress the limited scope of PAR and suggest that broad public interest was involved in a competitive transportation fight.

5. Mr. Deegan reported that he would push action by the presidents to meet with the automotive and oil company officials to discuss the truck problem.

6. At the request of Mr. Littlefield and Mr. Lyne, it was agreed that Byoir should concentrate more fully on the order of enforcement of weight laws by state police.

7. Approval was given to the proposal to have reprints of the People Today article mailed by friendly organizations.

8. Arrangements were approved for inviting Mr. Young of the Southern Railroad and Messrs. Sims and Hayes of the Western Association to selected future meetings.

Plaintiff's Exhibit 71

January 7, 1952 [1953]

Mr. D. I. Mackie
Eastern Railroad Presidents Conference
143 Liberty Street
New York, New York

Dear Dave:

This is no way to approach you on your first day on the job, but it is in the form of a warning - that I am most anxious to see you at your earliest convenience.

The problem is explosives. We have an overall directive to work with the railroad lawyers on applications of truckers pending before the ICC. However, the lawyers now want to sponsor state legislation to restrict munitions trucking. We are very anxious to do something on this but feel that there must be a set policy and if possible some sort of uniform legislation.

I am sure that if we can get the proper railroad people together, we can get this worked out.

Sincerely,

C. Colburn Hardy

CCH:NT

Plaintiff's Exhibit 72

THE PENNSYLVANIA RAILROAD CO.
PHILADELPHIA 4

July 18, 1952

John J. Fitzpatrick, Esq.
Trunk Line Association
1 Park Avenue
New York, N. Y.

F. X. Masterson, Esq.
Motor Carrier Bureau
1 Park Avenue
New York, N. Y.

Gentlemen:

As of interest I am sending you the enclosed press release by the Public Utilities Commission of Ohio, about its complaint to the Interstate Commerce Commission seeking cancellation of the interstate authority of Riss & Co. of Kansas City, Missouri. The release says that the action marks the start of a new policy which may be extended to include other irresponsible interstate truck operators.

In view of Ohio's strong evidence of continued willful violations of State and Federal law in Ohio, it may be that the Interstate Commerce Commission could find Riss unfit to operate in interstate commerce and revoke its operating authorities as requested. Another possibility is that the Interstate Commerce Commission might cancel Riss' authority to operate in interstate commerce only in or through Ohio. This would seem the least the Interstate Commerce Commission could do under its duty "to cooperate with the several states and the duly authorized officials thereof," provided in the Interstate Commerce Act under the National Transportation Policy.

Very truly yours,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-encl.

Plaintiff's Exhibit 72A

FROM: The Ohio Public Utilities Commission
Paul D. Deaton, Secretary
Tele: Main 1265 Ex. 300

FOR RELEASE IN PAPERS
OF TUESDAY, JULY 15, 1952

COLUMBUS, OHIO, July 15 -- The Public Utilities Commission of Ohio announced today that for the first time in its history the PUCO has asked the Interstate Commerce Commission to put a trucking company out of business.

The Commission cited Riss and Co. of North Kansas City, Missouri for 596 violations of Ohio laws, rules and regulations over a two and a half year period. The agency pointed out that a majority of the violations were concerned with safety practices and that much of Riss' business is that of hauling explosives.

The PUCO said its action marks the start of a new policy and that citations may be made for the revocation of operating authority for other interstate truck companies.

Chairman Robert L. Moulton said the Commission acted on the theory that safety on Ohio highways is a primary concern of the PUCO, and that the way any truck company complies with state laws, rules and regulations is a large factor in determining whether that company should be permitted to operate.

In its citation, the Commission listed 104 arrests by the Ohio state highway patrol for violations by Riss of Ohio traffic laws. Also listed were 102 warnings of violations of PUCO rules and regulations and there was a compilation of 390 arrests for such violations by Riss.

The Commission said this list of 596 infractions contained a total of 288 violations of the Motor Carrier Safety Regulations, which are administered by the ICC.

Chairman Moulton called attention to one two-day period which he said showed particularly dangerous operation on the part of Riss and Company. He said that on April 6, 1952, a driver of a Riss truck loaded with explosives was arrested and fined $150 for having empty fire extinguishers and for other safety violations. On the same day, in the same community, a second driver of an explosive-laden Riss truck was fined $300 for the same offenses.

"Then", Moulton said, "came the crowning blow. Within the next 24 hours, a third Riss driver, carrying more explosives, was arrested for having empty fire extinguishers and for additional safety violations. But this truck also had a leaking gasoline tank. This driver was fined $1,000 and ordered to get out of town immediately."

The Commission citations showed 39 cases where fire extinguishers on Riss trucks either were empty or non-existent. It also showed two cases where Riss drivers illegally left the scene of an accident; 26 arrests for speeding, reckless driving and illegal passing, and 35 arrests for overloads.

The citation was mailed Saturday to the ICC which must notify the truck company. Riss has ten days from the time it receives the notification in which to answer the citation.

Plaintiff's Exhibit 73
Page one

THE PENNSYLVANIA RAILROAD COMPANY
Legal Department
Philadelphia 4, Pennsylvania

July 18, 1952

Operating Committee Report

Gentlemen:

RE: Riss & Co. et al. -
MC-200 Sub 84

The Commission in response to a petition by Riss, deferred the effective date of its cease and desist order resulting from our earlier petition until July 21. In the meanwhile it is considering a petition by Riss to reconsider and vacate its cease and desist order. You will remember that the issue here is whether Riss is operating far beyond its temporary authority in hauling explosives. We expect a decision on this momentarily.

I am writing now, however, to send you the enclosed press release by the Ohio Public Utilities Commission, of which I have just obtained copies. This very favorable and unprecedented move on the part of the State of Ohio may render a decision on the temporary authority a question of less importance. In any case, it bolsters our position in all respects.

As important as this release is to the Riss Case, I would like to point out particularly the Commission's statement that its action marks the start of a new policy which may be extended to include other irresponsible interstate truck operators. The precedent set by the State of Ohio could easily mean the beginning of an entirely new attitude on the part of state governments toward the abuses of interstate authorities. If other states whose records indicate that particular operators show the same kind of willful disregard for state and federal law should join in actions of

this type, presenting a solid front, it might be a great step toward ending the truckers' abuses of the public highways.

Very truly yours,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB

Plaintiff's Exhibit 74
Page one

THE PENNSYLVANIA RAILROAD COMPANY
Legal Department
1740 Broad Street Station Building
Philadelphia 4, Pennsylvania

September 24, 1952

Mr. Don Stull
Room 202
1755 High Street
Columbus, Ohio

Dear Don:

I understand from Del Beman that Riss has filed a request with the I.C.C. asking OPUC to make their complaint more definite and certain. I have not yet seen the Ohio pleading. However, it seems to me this gives Ohio the opportunity to clean up the situation somewhat along the lines we earlier talked about.

As I understand it, so far as Riss' permanent authority to haul explosives is concerned, the complaint as it now stands will ultimately be fairly ineffectual. Almost the most that can be hoped for is a compliance order by the Commission requiring Riss to obey the law. This order will be for 30 or 60 days after which Riss will be able to prove that it has complied, and then the Commission can do very little about its authority.

On the other hand, the Commission has the right to terminate Riss' temporary authority for good cause at any time. The complaint filed by Ohio is so general that it leaves open both of these actions (compliance order to permanent certificates and/or termination of temporary authority). But there is little doubt that the Commission will not take any action with respect to the temporary on the present pleading.

Since Riss is so anxious for a definite pleading, I should think

the prayer for relief could be made more definite at the same time. The Commission is now in a position to ask the I. C. C. to terminate Riss' temporary authority immediately, without any of the difficulties which have stood in the way so far.

I understand the Commission has a very good man on the legal side of this transportation work. However, it may be that among the railroads we could find someone who could be of help, either directly or through you. Some of our fellows have given considerable thought to the procedural problems raised by the Ohio complaint. I am inclined to think we ought to get together with them soon to see just what answers we might be able to suggest.

Let me know what you think.

Yours truly,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB

bcc - Frank J. Steinbrecher, Esq.

Plaintiff's Exhibit 75
Page one

Carl Byoir & Associates, Inc.
175 South High Street
Columbus 15, Ohio
Fletcher 2201

October 14, 1952

Mr. Lewin W. Wickes, Jr.
Legal Department
The Pennsylvania Railroad Co.
1740 Broad Street Station
Philadelphia 4, Pa.

Dear Lew:

Sorry to be so tardy in answering your letter, but I really haven't had anything to report until this weekend.

I've talked several times with our PUCO officials regarding your suggestion that quicker action would be possible if they attacked Riss' temporary authority to haul explosives. But they don't seem to want to go that far.

They are filing today in Washington an answer to Riss' request that the Ohio complaint be made more definite. This latest action accuses Riss of seeking to "divide and conquer" the PUCO and ICC and levels several other blasts at the firm for apparently showing little or no interest in the seriousness of the Ohio charges. It asks that Riss' pleading for more detailed charges be denied.

I helped Paul Deaton, PUCO secretary-publicist, work up a scathing news release on the subject which should also hit the papers today. Del Beman is pushing it along from the Washington angle and we've distributed it to all the wire services and news relay points out this way.

The aforementioned Paul Deaton will be in Washington the week of Oct. 24-25, and Del Beman will have him in tow. The latter part of the week at least one and maybe more of our utilities commissioners will be in Washington, too, and I've suggested to Beman that through Deaton we may be able to arrange a casual meeting of you and the Commissioners. This might giveus another opportunity to suggest the the action against Riss' temporary authority. Deaton, himself, is a good instrument to work through in this respect, too, for through him I've managed to get the commission to do several things without their knowledge of me in the picture.

I'm not sure that the PUCO wants to see Riss ruled off the road as they indicated in their original action with the ICC. I feel that they are pursuing this course mostly for political reasons -- the publicity that attends the move -- in an effort to help the cause of Gov. Frank J. Lausche who is running for reelection with his battle against the trucking lobby (for a weight-distance tax) as the principal issue. But this doesn't exactly make me unhappy, because we've managed to get several very good news breaks out of it, and we do have the PUCO in the position that if a big explosion should occur out this way, they'd almost have to go after Riss' temporary authority as you've suggested.

Sincerely,

Don Stull

P.S. Am enclosing a clipping on the above mentioned news release.

LUCE'S PRESS CLIPPING BUREAU
New York, N. Y. 75B

Clipping From
COLUMBUS, O., DISPATCH
Circ. Eve. 157,288 S. 216,744

PUCO Hits Trucking Firm Law Evasions

The State Utilities Commission Monday said the Kansas City trucking firm of Riss & Co., is trying to "divide and conquer" it and the Interstate Commerce Commission.

The PUCO statement was in a memorandum opposing Riss's motion to make the commission be more definite in its claim the company violated Ohio laws 596 times in two and one-half years.

The PUCO last July 14 asked the ICC to rule Riss off the road because of repeated company violations. At the time the ICC said it was the first action of its kind ever filed by a state commission.

The PUCO charged Riss failed "to properly supervise and control its operations (and) attempts to divert attention from such failure."

The PUCO said Riss's action was designed to force Ohio into setting forth its evidence and proof prior to hearing. The commission said the truck company's violations were matters of public record.

In an earlier hearing, Riss claimed it was subject only to the jurisdiction of the ICC.

The PUCO said state and federal statutes provide for co-operation between it and the ICC.

The PUCO's citation against Riss last summer listed 390 company arrests for violation of PUCO rules and regulations, 102 warning for violations of PUCO rules, 101 arrests for violations of Ohio traffic laws, and added the company's 596 infractions included 288 violations of the motor carrier safety regulations, administered by the ICC.

PUCO Chairman Robert Moulton said that last April 16-17 three Riss drivers, hauling explosives through the same community were arrested and fined a total of $1150 for having empty fire extinguishers, a leaking gasoline tank, and other safety violations.

BEST COPY AVAILABLE
from the original bound volume

Plaintiff's Exhibit 76

The Pennsylvania Railroad Company
Legal Department
1740 Broad Street Station Building
Philadelphia, Pa.

October 15, 1952

Messrs.: John W. Nisbet, Esq., Assn. of Western Railroads,
Union Station Building, Chicago, Ill

Frank J. Steinbrocher, Esq., Santa Fe Hwy. System, 1211 Railway Exchange Bldg., Chicago 4, Ill.

F. X. Masterson, Esq., Motor Carrier Bureau, 1 Park Avenue, New York, N. Y.

Gentlemen:

The enclosed letter to Don Stull was in answer to a letter from him in which he said:

"I've talked several times with our PUCO officials regarding your suggestion that quicker action would be possible if they attacked Riss' temporary authority to haul explosives. But they don't seem to want to go that far.

"I'm not sure that the PUCO wants to see Riss ruled off the road as they indicated in their original action with the ICC. I feel that they are pursuing this course mostly for political reasons -- the publicity that attends the move -- in an effort to help the cause of Gov. Frank J. Lausche who is running for reelection with his battle against the trucking lobby (for a weight-distance tax) as the principal issue."

Yours truly,

Lewin W. Wickes, Jr.
Assistant General Solicitor

Plaintiff's Exhibit 76A
Page one

October 15, 1952

The Pennsylvania Railroad Company
Legal Department
1740 Broad Street
Philadelphia, Pa.

Don Stull, Esq.
Carl Byoir & Associates, Inc.
175 S. High Street
Columbus 15, Ohio

Dear Don:

Thanks for your letter of October 14, 1952. I am not clear what you mean by "the week of October 24-25." I will be in Washington, October 22. In any case, I assume I should keep in touch with Del about that.

I am sorry to hear that the P.U.C.O's attitude is relatively lukewarm. If Riss were "ruled off the road" by a cancellation of the temporary authority, this would apply to explosives only. Therefore, Riss would not be hurt in its general business, and at the same time the move would indicate the value of records like those Ohio keeps as an enforcement measure.

In any case, the real consequences to Riss of a cancellation of its temporary authority would in all likelihood be less serious to Riss in actuality than may now appear to the P.U.C.O. I say this for two reasons. In the first place, we are in good hope that the cease and desist order of the I.C.C., which cuts Riss' temporary authority down very materially, can be made to stick in the proceedings now pending before a three-judge court in Kansas City. In the second place, Riss' temporary authority for explosives (while "permanent" for the last five years) depends for its existence on the permanent application which was the subject of the long hearings last winter. Of course, we cannot make any certain predictions on a proceeding of that kind. However, it seems doubtful to me that the Commission will give Riss any very extensive

permanent authority to handle explosives, and the temporary authority will fall in its entirety in any case at the time the decision is made with respect to the permanent authority application. In other words, the temporary authority exists at all only pending decision on the application for permanent authority.

Furthermore, Riss is entitled in any case to apply for temporary authority for explosives where it can show a definite need for the service, and this is what it would have to be doing in any case except for the pendency of the application for permanent authority.

Incidentally it would be most helpful to us to have copies of Riss' request that the Ohio complaint be made more definite and of the P.U.C.O.'s answer to that request. Could you obtain and send these on to me?

Yours truly,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-ec

cc-Del Berman, Esq.

bcc - Messrs. F.X. Masterson
Frank J. Steinbrecher
John W. Nisbet

Plaintiff's Exhibit 77

Carl Byoir & Associates
Columbus 15, Ohio

October 20, 1952

Mr. Lewin W. Wickes, Jr.
Assistant General Solicitor
The Pennsylvania Railroad Co.,
1740 Broad Street Station Bldg.,
Philadelphia 4, Pennsylvania

Dear Lew:

Enclosed is a copy of Riss' answer to the PUCO's original charge which you requested. Sorry I don't have the PUCO answer at this time, but Paul Deaton, whom you probably will have met by the time this reaches you, tells me there are no extra copies available. There were none available when Deaton set sail for Washington, that is. I'll get a copy and forward it to you when Deaton returns.

Sorry about that typographical error in my recent letter. I meant to say Deaton would be in Washington Oct. 20 to 25 and it ca. e up Oct. 24-25. I wasn't too alarmed, however, for I know you'd be in touch with Del Beman and that he could straighten it out.

Understand we now have someone working full time on publicizing the explosive truck angle. I argued like hell for this last time I was in New York, and I'm glad to see the powers that be finally saw the light. Seems to me the truckers are extra-extra vulnerable here and that we should be able literally to run 'em right out of this business.

Hope we can get together again sometime soon -- in the Lafayette Hotel; wasn't it?

Regards,

(signed) Don Stull

DWS:vs
Enc.

Plaintiff's Exhibit 78

October 24, 1952

Don Stull, Esq.
Carl Byoir & Associates, Inc.
175 S. High Street
Columbus 15, Ohio

Dear Don:

Thanks for your letter of October 20, and for the Ris Answer. I will be glad to have a copy of the P.U.C.O. Answer when you can get one.

Had a couple of very nice visits with Paul Deaton, and found him a very congenial fellow. We went out to Del Beman's for dinner and then later rambled around Washington a little. Yesterday we spent an hour with Commissioner Miller.

Much to our surprise, the Commissioner seemed very receptive about the possibility of a frontal attack on the TA. After that conversation, Paul suggested I should head out as soon as possible for Columbus to talk to Commissioner Moulton. I thought it might be well to stop by Columbus on the way to Kansas City, as I have an argument at Kansas City on November 12 on the cease and desist on the TA. However, Paul felt it should be sooner than that; so I will try to set it up next week and will probably call you early in the week.

Looking forward to seeing you, I am,

Yours,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-

Plaintiff's Exhibit 79

THE PENNSYLVANIA RAILROAD COMPANY
LEGAL DEPARTMENT
1740 Broad Street Station Building
Philadelphia 4, Pa.

October 27, 1952

* * * * * * * *

Re: Ohio Complaint.

James W. Nisbet, Esq., Assn. of Western Railroads, Union Station Building, Chicago, Ill.

Frank J. Steinbrecher, Esq., Santa Fe Rwy. System, 1211 Railway Exchange, Chicago 4, Ill.

F. X. Masterson, Esq., Motor Carrier Bureau, 1 Park Ave., New York 16, N. Y.

Gentlemen:

I have just received a copy of Riss' Answer filed with the Interstate Commerce Commission, which I enclose for your file.

I had an opportunity in Washington to talk to paul Deaton, Secretary of the P. U. C. O., and later to Commissioner Miller of the P. U. C. O. Miller, and this somewhat surprised us, was very receptive indeed to our suggestion with respect to the TA. In view of this Deaton suggested that I trek to Columbus and talk to Commissioner Moulton, and indicated that it would be well to make this as soon as possible.

In contrast to the attitude Stull indicated, Commissioner Miller's approach was quite militant.

Yours truly,
/s/ Lew

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-encl.

Plaintiff's Exhibit 80

October 27, 1952

Delmar W. Beman, Jr., Esq.
Carl Byoir & Associates
829 National Press Building
Washington, D. C.

Dear Del:

I was very happy indeed about results in Washington and hope I can get out to Columbus this week as Paul suggested.

We talked about Sheriff Beck's exhibit showing the Riss explosion near Haviland, Kansas. This is described in the abstract of Sheriff Beck's testimony, at page 787, Volume II B of the Railroad Brief. Both you and Ross Hetherton have copies, I believe.

Yours truly,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB

Plaintiff's Exhibit 81

June 3, 1953

Mr. Don Stull
a/c Carl Byoir & Associates, Inc.
175 South High Street
Columbus 15, Ohio

Dear Don:

Thanks for your letter of June 1st.

I am not surprised there is not much on Baggett, for he operates only over a route of about 100 to 150 miles across the southern tip of Ohio. I had rather hoped there would be enough to count when stacked against the limited operation. However, it is doubtful whether there is enough here to fool with.

There is not much to be happy about in connection with the I.C.C. order. The P.U.C.O. had a much better chance "to really present all the evidence" before the order was issued than it does now. Further, the order is the result of the I.C.C.'s being somewhat put out when the P.U.C.O. was not ready to go forward with its case earlier this year. For this reason it is imperative from a strategic point of view to respond with a more definite complaint as quickly as possible. Furthermore, from an atmospheric point of view as bearing on the other cases now being considered, it would be most helpful to get the more definite complaint in within the next month. I agree that there is nothing for you to do on the order so far as publicity is concerned, but hope we can follow this very very closely.

Yours truly,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB

cc - Jim Devine
C. C. Hardy

Plaintiff's Exhibit 82

The Association of Western Railways
Law Department
280 Union Station Building
517 West Adams Street
Chicago, Illinois

October 30, 1952

Mr. Lewin W. Wickes, Jr.,
Assistant General Solicitor,
The Pennsylvania Railroad Company
1740 Broad Street Station Building
Philadelphia, Pennsylvania

RE: MC-C-1413, The Public Utilities Commission of Ohio V. Riss & Company, Inc.

Dear Lew:

Thank you for your copy of Riss' Answer in the above-entitled proceeding, sent with your letter of the 27th.

I was glad to get the news regarding the attitude of the Ohio Commission with respect to Riss' temporary authority and think you should go to Columbus as soon as your engagements will permit and have a talk with the other Commissioner. The I.C.C. may or may not take a long time to dispose of the complaint case but on the theory that there may be some delay, especially since it has not as yet been set for hearing, it seems to me adviseable to press for early action in the temporary authority proceeding. There appears to be nothing to lose and everything to gain by such a move, and I hope you are sucessful in getting something underway.

Very truly yours,

/s/ James W. Nisbet

cc-Messrs:
F. J. Steinbrecher
F. S. Masterson

 Plaintiff's Exhibit 83

The Pennsylvania Railroad Company
Legal Department
1740 Broad Street Station Building
Philadelphia 4, Pa.

October 31, 1952

F.X. Masterson, Esq., Motor Carrier Bureau, 1 Park Ave.,
New York 16, N.Y.
Frank J. Steinbrecher, Esq., Santa Fe Rwy. System, 1211 Railway
Exchange, Chicago 4, Ill .
James W. Nisbet, Esq., Assn. of Western Railroads, Union Station
Building, Chicago, Ill.

Gentlemen:

I am enclosing to each of you the following documents in P.U.C.O. v Riss, before the I.C.C., MC-C-1413:

Defendants Motion to Make More Definite and Certain Under Rule 36.

Memorandum Opposing Defendant's Motion to Make Complaint More Definite and Certain.

Had a very satisfactory conference in Columbus and hope that we can meet soon to decide on further steps and get some work done they would like to have from us.

Yours truly,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-encl.

Plaintiff's Exhibit 84

The Pennsylvania Railroad Company
Legal Department
1740 Broad Street Station Building
Philadelphia 4, Pa.

December 15, 1952

James W. Nisbet, Esq., Assn. of Western RRs, Chicago, Ill.
F. J. Steinbrecher, Esq., Santa Fe System, Chicago, Ill.
F. X. Masterson, Esq., Manager, Motor Carrier Bureau, New York, N.Y.
W. A. Renz, Esq., General Atty., L. V. Railroad, New York, N.Y.

Gentlemen:

According to our conversation in Washington, I have taken a shot at putting something on paper as a form of petition to revoke temporary authorities. This is very rough, and I would appreciate it if you gentlemen would give it a good kicking around.

I am somewhat disturbed about the Commission's power to revoke temporary authorities without hearings. The statutory provisions are not as clear as I had thought, unless, in drafting this, I have missed something. As I understand it, the Commission has consistently taken the position that it has power to revoke temporary authorities for good cause at any time without hearing. Nevertheless, Sections 210a and 9(b) are not as clear as I remembered on this point.

As it seems from our conversation in Washington that it will be impossible to collect all of us in Columbus in the near future, we might consider whether it would be advisable merely for a couple of us to get out there as soon as we are satisfied with a form of petition. Let me have your suggestions as soon as possible.

Very truly yours,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-encl.

Plaintiff's Exhibit 85

Carl Byoir & Associates, Inc.
175 South High Street
Columbus 15, Ohio

June 1, 1953

Mr. Lewin W. Wickes, Jr.
Assistant General Solicitor
The Pennsylvania Railroad Co.
1740 Broad Street Station Building
Philadelphia 4, Pa.

Dear Lew:

To answer your telephone queries regarding Baggett's Ohio record and the PUCO reaction to ICC's ordering Ohio to make its complaint against Riss more definite:

1. Baggett's record in Ohio is virtually spotless. In one and a half years, PUCO records show they've been involved in no accidents, have had no overload convictions and have only 8 or 10 violations of PUCO regulations.

2. Attorney Johnny Case is happy that the ICC has ordered that the complaint be made more definite. Deaton quotes him as saying: "This'll give us the chance to really present all the evidence." Deaton says Case plans to "make it more definite" through the facilities of the attorney generals office with the various county prosecutors being brought into the act, verifying and confirming, etc. This might build into a pretty good story later on, but we don't plan to do anything now for fear of jeopardizing the various county activities. However, it looks like a long drawn-out process at best.

I'll keep watch from this end, however.

Regards,

DS-vs

(signed) Don Stull

CC: Jim Divine
C. C. Hardy

Plaintiff's Exhibit 86
Page One

The Pennsylvania Railroad Company
Legal Department
1740 Broad Street Station Building
Philadelphia 4, Pa.

December 8, 1952

Re: Baggett Application, MC-89778, Subs - 36, 51 and 54-

Preparation for meeting.

F. X. Masterson, Esq., Manager
Motor Carrier Bureau
1 Park Avenue
New York, N.Y.

Dear Frank:

In addition to meeting you proposed of the Special Inter-territorial Anti-Riss Committee, suggest we should call a meeting of Eastern motor carrier representatives, inviting other members of the Special Committee, and possibly general or particular Southern representation.

I suggest you call this meeting on the Baggett Case, with a view to extending the scope of discussion to cover such general explosives matters as we are ready to take up at the time.

There are several things we need some particular information about: Particularly we should know where Baggett is operating at the present time, both with commercial and Government explosives. In tracking down State violations we need to know what States or areas to concentrate on. In evaluating the possibility of taking more

moving pictures, we should try to locate in advance some particular concentration or concentrations of movement by Baggett. Hence, I think each motor carrier representative should be prepared to report in full on all truck movements to and from installations on his line.

My impression is that we should put the heat on this preparatory work immediately, as it would be of great assistance in preparing this and other pending cases.

Very truly yours,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB

cc- James W. Nisbet, Esq. W. A. Renz, Esq.
F. J. Steinbrecher, Esq. Mr. S. J. McCartney

Plaintiff's Exhibit 87

The Commonwealth of Massachusetts
Department of the Attorney-General
State House, Boston 33

Francis E. Kelly

Attorney General

Note to Editor:

I feel that this is a story of particular importance to Massachusetts. The state intervened in the hearings before the Interstate Commerce Commission on the recommendation of Governor Paul A. Dever. The state's case was ably presented to the ICC by Assistant Attorney-General Francis J. Roche.

For your information, six of the 20 applicants in these cases ply routes in Massachusetts: Garford, Interstate, Red Ball, Riss, Spector and Whitten. I understand these six companies operate 93 trucks and some 2,290 semi - trailers.

As you know, our highway systems are congested and hazardous despite the fact that the state spent $55.3 million on highways in 1950. Accidents involving trucks carrying explosives could add unnecessary millions to our highway costs, to say nothing of the possible loss in lives and private properties.

Francis E. Kelly

Francis E. Kelly
Attorney General
Commonwealth of Massachusetts
Boston, Massachusetts

For Release in AM's of Wednesday
August 20th

BOSTON, August 19 -- Five states and four cities joined forces today in an appeal to the Interstate Commerce Commission to defeat the attempts of 20 trucking firms to increase the movement of dangerous explosives over public streets and roads.

The appeal was contained in a brief filed with the ICC in Washington by Massachusetts Attorney-General Francis E. Kelly on behalf of Massachusetts, Indiana, West Virginia, Connecticut, Rhode Island, St. Louis, Mo., Pittsburgh, Pa., Cleveland, O., and Peoria, Ill.

It "respectfully submitted" that the applications of 20 truckers for permanent authority to haul munitions and dangerous explosives "should be dismissed."

Attorney-General Kelly said the signers of the brief were among more than 80 government units, civic organizations, public interest groups, professional societies, safety councils and industries which opposed the applications.

"Increased explosives trucking authority," Mr. Kelly said, "Would add tons of potential tragedy to our crowded and accident-ridden highways and streets.

"The governments which joined Massachusetts in opposing the applications realize," Mr. Kelly said, "that some explosives must be transported by truck, but we oppose such perilous traffic except in cases of absolute and demonstrable necessity."

Granting of the current applications, he said, would give permanent explosives-carrying authority to firms which operate almost 6,000 highway freighters.

The brief, summing up seven months of hearings which ended last March, asserted that "the record shows that the commodities involved are hazardous commodities which in highway transportation constitute an unavoidable threat to the safety of the public, other highway traffic, properties bordering the highways, and the highways themselves and publicly owned bridges, tunnels and other structures."

"A matter of particular concern," it said, "is the hazard to school children created by the proximity of many large schools to the highways and the fact that a great many children must move to and from the schools by highways in school buses.

"These hazards," continued the brief, "are increased and will continue to increase by reason of the inadequacy of the public highways to handle the commercial and private traffic to which they are subjected."

Before World War II, the Attorney-General explained, most explosives were moved by rail but trucks were given temporary explosives-hauling authority during the war as an emergency measure. Most of these authorities ended after the emergency, however.

Mr. Kelly said the applications opposed by the brief are in two cases before the ICC. One case involves the application of Riss & Company, a North Kansas City, Mo., trucking firm which now has temporary authority to haul dangerous explosives and seeks permanent authority. The second case consolidates the applications of the remaining 19 carriers. Unlike Riss, they do not have temporary authority. They have asked that the explosives exceptions be stricken from their regular general-commodity certificates and, in some cases, also have applied for new explosives-carrying routes.

(The Ohio Public Utilities Commission asked the ICC last month to put Riss out of business for flagrant safety violations. The PUC charged that Riss' explosives trucks had been involved in 596 violations of Ohio law during a period of two and one-half years. One explosives-laden truck was

found with a leaking gasoline tank and empty fire extinguishers.)

Attorney-General Kelly said other opponents to the truckers' applications included Maryland, New Jersey, Pennsylvania, Wisconsin, Fort Wayne, Ind., Milwaukee, the National Congress of Parents & Teachers, the National Sheriff's Association, the American Automobile Association, the American Association of State Highway Officials and the Council of State Governments.

The motor carriers involved are Riss, Pacific Intermountain Express Co., Garford Trucking, Inc., Kramer Brothers Freight Lines, Inc., Hancock Trucking, Inc., Interstate Motor Freight System, Wheelock Brothers, Inc., C. I. Whitten Transfer Co., Ringsby Truck Lines, Independent Truckers, Inc., Union Transfer Co., Hennis Freight Lines, Inc., Spector Motor Service, Inc., Watson Brothers Transportation, Hughes Transportation, Inc., Red Ball Transfer Co., Eastern Motor Express, Inc., Mid-Continent Freight Lines, Inc., Prucks Transportation Inc., and T. M. Zimmerman Co.

Plaintiff's Exhibit 88

Hon. William E. Powers
Attorney General
State of Rhode Island
250 Benefit Street
Providence, Rhode Island

Dear Judge Powers:

This will confirm our telephone conversation on Tuesday, July 22nd. Attached hereto is the proposed press release to be issued by your office at the time the consolidated brief in which Rhode Island participated is filed with the Interstate Commerce Commission. There are 7 dailies and 12 weeklies in the state of Rhode Island and, it is my opinion, that your release should receive state-wide publicity. Knowing of Governor Roberts' concern in this matter, you will note that we have given him certain mention.

The mechanics of the release has been assigned to my associate, Mr. Richard Strouse, whose address is Room 3800, 10 E. 40th Street, New York 16, N. Y. If the attached draft meets with your approval, I would appreciate your forwarding to Mr. Strouse approximately 30 envelopes and letterhead bearing the title of your office. Mr. Strouse will then have the release mimeographed and envelopes properly addressed to the dailies and weeklies, and will return all to your office with instructions as to when the release should be made.

Very truly yours,

Walter A. Renz
General Attorney
Lehigh Valley Railroad Co.
143 Liberty Street
New York, N. Y.

WAR/rg
Enc.

Plaintiff's Exhibit 88A

STATE OF RHODE ISLAND
PROVIDENCE

August 6, 1952

Mr. Richard Strouse,
Room 3800
10 E. 40th Street
New York 16, N. Y.

Re: Interstate Commerce Commission

Dear Sir:-

As per Mr. Renz' instructions we are enclosing approximately 30 envelopes and letterhead bearing the title of this office.

We understand you will have the release mimeographed and envelopes properly addressed to the dailies and weeklies and will return all to this office with instructions as to when the release should be made.

Very truly yours,

(signed) William E. Powers
Attorney General

OH

enclosures

Plaintiff's Exhibit 88B

William E. Powers
Attorney General
State of Rhode Island
Providence, Rhode Island

FOR RELEASE in AM's of August 20th

PROVIDENCE, August 19 -- A plea to the Interstate Commerce Commission to turn down applications from 20 trucking firms which want permanent authority to haul dangerous explosives was filed today by Rhode Island and eight other state and city governments, Atty. -Gen. William E. Powers announced.

"The safety of its citizens is a prime responsibility of government," Mr. Powers said, "and Rhode Island will carry out that responsibility."

The brief was filed by Massachusetts Atty. -Gen. Francis E. Kelly on behalf of Massachusetts, Rhode Island, Connecticut, Indiana, West Virginia, Cleveland, Ohio, Peoria, Ill., Pittsburgh, Pa. and St. Louis, Mo.

Mr. Powers said 26 other intervenors appeared before the ICC to oppose the truckers' applications and many other groups stated their opposition.

The brief opposed two cases now before the ICC. One was an application from Riss and Company, a North Kansas City, Mo., motor freight line which seeks to make permanent the temporary authority under which it now hauls dangerous explosives. Mr. Powers said 19 other trucking firms' applications were consolidated into the second case.

The attorney-general said trucks carried very few explosives before World War II but were given temporary authority during the war as an emergency measure. After the war, most of the authorities ended. The trucking companies then applied for permanent authority to carry explosives. There were originally 60 applicants, Mr. Powers said, but public protests caused all but 20 to drop their applications.

Mr. Powers said Rhode Island intervened against the truckers on the recommendation of Gov. Dennis Roberts and fought the applications on grounds that to grant them would add materially to the dangers of highway travel. Mr. Powers pointed out that Rhode Island has had stringent laws governing the transportation of explosives since 1941.

The brief, filed today at Washington, argues that explosives should not move by highway except when there "is absolute and demonstrable necessity for that kind of movement" and the "wide-open permanent authority" should not be granted.

"In support of this position," the brief says, "the record shows that the commodities involved are hazardous commodities which in highway transportation constitute an unavoidable threat to the safety of the public, other highway traffic, properties bordering the highways, and the highways themselves and publicly owned bridges, tunnels and other structures. A matter of particular concern is the hazard to school children created by the proximity of many large schools to the highways and the fact that a great many children must move to and from the schools by highway in school buses. . ."

The brief concludes:

"The evidence before the Commission which shows the hazardous nature of the commodities, and the danger of transporting the commodities by highway, particularly under existing conditions of inadequate and over-burdened highways and without adequate policing, fully supports the position of these intervenors that no authority should be granted. . ."

The brief sums up the intervenors' arguments presented to the Commission during hearings which lasted from last September through March.

Other intervenors, besides those signing this brief, include Pennsylvania, New Jersey, Wisconsin, Delaware, the Council of State Governments, the National Congress of Parents & Teachers, New York City, Pittsburgh, Fort Wayne (Ind.) and the American Automobile Association.

Mr. Powers said one major objection to explosives-hauling trucks is that police have neither the time nor facilities to give explosives trucks adequate conveying. This was presented during the hearings by John T. Sheehan, Superintendent of the Rhode Island State Police.

Applicants opposed by today's brief are: Riss, Garford Trucking, Inc., Pacific Intermountain Express Co., Kramer Brothers Freight Lines, Inc. Hancock Trucking, Interstate Motor Freight System, Wheelock Brothers, Inc., C. I. Whitten Transfer Co., Ringsby, Independent Truckers, Inc., Union Transfer Co., Hennis Freight Lines, Inc., Spector Motor Service, Inc., Watson Brothers Transportation, Hughes Transportation, Inc., Red Ball Transfer Co., Eastern Motor Express, Inc., Mid-Continent Freight Lines, Inc., Prucka Transportation, Inc., and T. M. Zimmerman Co.

Plaintiff's Exhibit 89

December 15, 1952

Mr. Richard Strouse
Carl Byoir & Associates
10 E. 40th Street
New York, N. Y.

Dear Dick:

Your note of November 20 went to file, through some error of mine, before I got off an answer to you. Don is entirely right that the P. U. C. O's citations covered all Riss operations, and it is therefore improper to characterize the 596 violations as applying to "explosives-bearing Riss trucks." You are entirely correct in saying that you asked me specifically about the sentence in the release concerning "596 violations of Ohio laws, including 288 violations of I. C. C. regulations."

Most humbly, I recognize that there was no excuse in my Oking a statement that the P. U. C. O. complaint applied to "explosives-bearing Riss trucks." I know perfectly goddam well that the Ohio violations related to all Riss operations, explosives and inert. Permit me to plead extenuation, however, that I understood your question to be whether the 288 violations were included within, in addition to, or overlapping the 296 violations; and I understood that I OK'd the statement from this angle. Nevertheless, I should certainly have picked up the other.

So sorry.

Yours truly,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-

cc: Mr. Don Stull
Room 202
175 South High St.,
Columbus, Ohio

Plaintiff's Exhibit 90

July 28th, 1952

Hon. Francis J. Roche
Assistant Attorney General
Room 370
State House
Boston, Massachusetts

Dear Frank:

I am enclosing herewith a draft of the proposed release to be issued by the Attorney General to all dailies and weeklies in Massachusetts and to the wire services for national coverage.

As you know, I plan to be on vacation for the next ten days, and have designated an associate of mine to handle the mechanics of the release. His name is Mr. Richard Strouse, with offices at Room 3800, 10 E. 40th Street, New York 16, N. Y.

If this release meets with the approval of the Attorney General, would you please send approximately 300 of his envelopes and letterhead to Mr. Strouse, who will then have the release mimeographed and envelopes addressed to the respective newspapers in Massachusetts and the national wire services. This would save the Attorney General's office considerable time and effort. However, in view of your press office at the State House, you may desire to have the release mimeographed and distributed, which is perfectly agreeable to me. In any event, I do wish to stress the necessity of a national and local state distribution.

Whatever your decision is in this matter, I would appreciate your advising Mr. Strouse at your earliest convenience.

Sincerely,

Walter A. Renz
Lehigh Valley Railroad Co.
143 Liberty Street
New York, N. Y.

WAR/rg
Enc.

Plaintiff's Exhibit 91

July 29th, 1952

Hon. Louis Weinstein
Assistant Attorney General
State Capitol Building
Hartford, Connecticut

Dear Louis:

This will confirm our telephone conversation of Tuesday, July 22nd. Attached hereto is the draft of the proposed press release to be issued by your office at the time the consolidated brief in which Connecticut participated is filed with the Interstate Commerce Commission. There are 27 dailies and 33 weeklies in Connecticut and, it is my opinion, that your release should receive statewide publicity.

The mechanics of the release has been assigned to my associate, Mr. Richard Strouse, whose address is Room 3800, 10 E. 40th Street, New York 16, N. Y. If the draft meets with the Attorney General's approval I would appreciate your forwarding to Mr. Strouse approximately 65 envelopes and letterhead bearing his title. Mr. Strouse will then have the release mimeographed and envelopes properly addressed to the dailies and weeklies, and will return all to your office with instructions as to when the release should be made.

Sincerely,

Walter A. Renz
Lehigh Valley Railroad Co.
143 Liberty Street
New York, N. Y.

WAR/rg

Enc.

Plaintiff's Exhibit 92

Hon. Fred R. Bechdolt
Deputy Attorney General
Attorney General's Office
State of Indiana
Indianapolis, Indiana

Dear Mr. Bechdolt:

In accordance with our conversation on Monday, July 21st, I am enclosing herewith a draft of the proposed press release for Attorney General McManamon. There are 42 dailies and 287 weeklies in the state of Indiana, and this release should receive state-wide publicity.

If the draft meets with the approval of General McManamon, it will be necessary for you to forward to me approximately 350 envelopes and letterhead of the Attorney General which will be used to mimeograph the release and to address each of the dailies and weeklies concerned. After this is done, envelopes, releases, etc. will be returned to you with instructions as to when the release should be made. My associate, Mr. Richard Strouse, at the same address as shown below for me, will handle the mechanics of the release, and should he need any additional information concerning same I have instructed him to call you.

I would appreciate your advising me and forwarding the above material as soon as possible since it will be necessary to have everything in order approximately five days before the filing date, namely August 20th, 1952.

Very truly yours,

Walter A. Renz
Room 3800
10 E. 40th Street
New York 16, N. Y.

WAR/rg
Enc.

Plaintiff's Exhibit 93
Page one

Hon. W. Bryan Spillers
Deputy Attorney General
State of West Virginia
Charleston, West Virginia

Dear Mr. Spillers:

As per our telephone conversation on Tuesday, July 22nd, I am enclosing herewith the draft of the proposed press release to be issued by the Attorney General of West Virginia. If the Attorney General approves the draft, I would appreciate your forwarding approximately 160 Attorney General envelopes and letterhead to my associate, as named below:

Mr. Richard Strouse
Room 3800
10 E. 40th Street
New York 16, N. Y.

Mr. Strouse is handling the mechanics of the release. When he receives the envelopes and letterhead he will have the release mimeographed and the envelopes addressed to the respective dailies and weeklies of the state of West Virginia. He will then return all to you with instructions as to when the release should be made. If any occasion arises in which Mr. Strouse needs additional information I have instructed him to call you. Since the filing date of the consolidated brief is August 20th, 1952, it would be greatly appreciated if you would advise of your decision to issue a press release in sufficient time to have the work accomplished, as described above, and returned to you by the filing date.

It was a great pleasure to talk to you, particularly with respect to your interest in bridge, and I promise to relay our conversation to my president.

Very truly yours,

Walter A. Renz
GENERAL ATTORNEY

Chauncey Browning
Attorney General
State of West Virginia
Charleston, West Virginia

FOR RELEASE August 20

CHARLESTON, Aug. 19 -- West Virginia was one of five states which united with four major cities today to appeal to the Interstate Commerce Commission to turn down applications which would "drastically increase" the movement of trucks loaded with dangerous explosives over public highways.

State Atty. -Gen. Chauncey Browning said the appeal was in the form of a brief filed with the ICC by Massachusetts on behalf of itself, West Virginia, Rhode Island, Connecticut, Indiana, Cleveland, O., Pittsburgh, Pa., St. Louis, Mo., and Peoria, Ill.

Browning said the brief sums up the signers' opposition to applications filed by 20 trucking firms for additional permanent authority to transport munitions and other dangerous explosives throughout most of the nation's public roadways.

"Approval of the applications," Browning said, "would drastically increase the highway transportation of explosives and vastly increase the obvious dangers of an accidental explosion which could take a tragic toll in lives and private and public properties. West Virginia opposes the applications for the sake of safety on highways which are already hazardous."

West Virginia was one of 35 intervenors who entered the ICC hearings to oppose the truckers' applications, Browning said. Although the hearings ended in March, interested parties were given until tomorrow to file their formal briefs.

Browning said applications of nine of the 20 companies would affect West Virginia. These nine companies operate 364 trucks and 2,377 semi-trailers. At one time, he said, about 60 trucking companies had applications for

permanent explosives-hauling authority filed with the ICC but protests from public interest groups caused most to withdraw.

The brief filed today, the attorney-general explained, bases its argument on "the danger inherent in the introduction of tons of explosives into the hazardous flow of traffic congesting public roadways." It stated the signing governments' opposition to highway movement of explosives except in "absolute and demonstrable necessity" and declared that "wide-open permanent authority" should be denied.

"In support of this position," the brief stated, "the record shows that the commodities involved are hazardous commodities which in highway transportation constitute an unavoidable threat to the safety of the public, other highway traffic, properties bordering the highways, and the highways themselves and publicly owned bridges, tunnels and other structures. A matter of particular concern is the hazard to school children created by the proximity of many large schools to the highways and the fact that a great many children must move to and from the schools by highway in school buses..."

The brief concluded that "the danger of transporting the commodities by highway, particularly under existing conditions of inadequate and over-burdened highways and without adequate policing, fully supports the position of these intervenors that no authority should be granted..."

This position was borne out recently, Browning said, in Ohio where explosives trucks operated by Riss and Company of North Kansas City, Mo., one of the applicants now before the ICC, were found to have been involved in 596 safety violations within two and one-half years. The Ohio Public Utilities Commission asked the ICC to revoke Riss' franchise. One explosives-laden truck was found with a leaking gasoline tank and empty fire extinguishers.

Applicants for the permanent explosives-hauling authority which operate in West Virginia are Eastern Motor Express, Inc., Hancock Trucking,

Inc., Hennis Freight Lines, Inc., Hughes Transportation, Inc., Ringsby Truck Lines, Inc., Spector Motor Services, Inc., Watson Brothers Transportation Co., Inc., C. I. Whitten Transfer Co., and Riss and Company.

Others are Pacific Intermountain Express Co., Garford Trucking, Inc., Kramer Brothers Freight Lines, Inc., Interstate Motor Freight System, Wheelock Brothers, Inc., Independent Truckers, Inc., Union Transfer Co., Red Ball Transfer Co., Mid-Continent Freight Lines, Inc., Prucka Transportation, Inc., and T. M. Zimmerman Company.

Intervenors opposed to the truckers' applications, besides those in today's brief, included New Jersey, Delaware, Wisconsin, Pennsylvania, New York City, Milwaukee, the National Sheriffs' Association, the National Congress of Parents & Teachers, the American Automobile Association, three railroad brotherhoods and several non-applying trucking companies.

Plaintiff's Exhibit 94

Hon. Thomas Cook
Deputy Attorney General
State House Annex
Trenton, New Jersey

Dear Tom:

As per our telephone conversation on Tuesday, July 22nd, I am enclosing herewith the draft of the proposed press release to be issued by the Attorney General of the state of New Jersey, when said state and the Commonwealth of Pennsylvania file their joint brief in the Riss and consolidated cases with the Interstate Commerce Commission.

If this draft meets with the approval of General Parsons, I should like to have you forward approximately 300 Attorney General envelopes and letterhead to my associate, Mr. Richard Strouse, whose address is Room 3800, 10 E. 40th Street, New York 16, N. Y. Mr. Strouse will then have the release mimeographed and the envelopes addressed to the dailies and weeklies of your state, and subsequently will return all of these to you for distribution by General Parsons.

As I told you, the extension allowed for filing briefs has now been set for August 20th, 1952 by special request of Riss. In view of the work involved, as stated above, I would appreciate your returning your advice and the material at your earliest possible convenience to allow sufficient time to get everything ready and in your hands by August 20th.

Very truly yours,

Walter A. Renz
Lehigh Valley Railroad Co.
143 Liberty Street
New York, N. Y.

WAR/rg
Enc.

Plaintiff's Exhibit 95

Hon. Harrington Adams
Deputy Attorney General
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania

Dear Mr. Adams:

As per our conversation on Monday, July 21st, I am enclosing herewith the draft of the proposed press release to be issued by the Attorney General of the Commonwealth of Pennsylvania, at the time that your brief is filed with the ICC in the matter of the Riss and consolidated cases.

If the Attorney General approves said release, I would like to have you forward approximately 480 of his envelopes and letterhead to my associate, Mr. Richard Strouse, Room 3800, 10 E. 40th Street, New York 16, N. Y. This number represents the amount of dailies and weeklies in the Commonwealth. Mr. Strouse will then have the release mimeographed and the envelopes properly addressed, and all will be returned to you for distribution. You can well appreciate the amount of work involved and the fact that we must have everything in your office by the filing date, which is August 20th.

I would appreciate your advising Mr. Strouse at your earliest convenience. He is acting under my instructions during a brief vacation which I plan to take within the next few days.

Very truly yours,

Walter A. Renz
General Attorney
Lehigh Valley Railroad Co.
143 Liberty Street
New York, N. Y.

WAR/rg
Enc.

Plaintiff's Exhibit 96

Hon. James M. McSweeney
Assistant Director of Law
City of Cleveland
Cleveland, Ohio

Dear Mr. McSweeney:

This will confirm our telephone conversation of July 21st, regarding the proposed press release by the Director of Law of the city of Cleveland, when the brief concerning the explosives cases is filed by the Commonwealth of Massachusetts with the Interstate Commerce Commission.

There are some 425 dailies and weeklies in the state of Ohio. It is proposed that Cleveland will issue a release that can be disseminated through these dailies and weeklies. I would appreciate your sending us 440 envelopes and letterhead of the Director of Law which will be used for mimeographing the release and addressing the newspapers concerned. This material should be sent to my associate, Mr. Richard Strouse, whose address is Room 3800, 10 E. 40th Street, New York 16, N. Y.

The city of Cleveland story should be a good one coming right after the recent action taken by the Ohio Commission against Riss & Co. which, as you know, involves a petition to the ICC requesting said agency to put Riss out of business.

When the release is ready and the envelopes, etc. properly addressed and printed, Mr. Strouse will send them to you for release by the Director with suggestions as to its handling and when it should be made. Should Mr. Strouse need any additional information he will call you.

Very truly yours,

Walter A. Renz
Room 3800
10 E. 40th Street
New York 16, N. Y.

WAR/rg

Plaintiff's Exhibit 97

STATE OF INDIANA
INDIANAPOLIS 4
Office of Attorney General

August 7, 1952

Mr. Richard Strouse,
Room 3800,
10 East 40th Street,
New York 16, New York.

Dear Mr. Strouse:

In accordance with our telephone conversation of yesterday, I am forwarding to you under separate cover, envelopes and letterheads for the use of the press release, a copy of which I am herewith returning to you.

I have made only two or three minor changes in the press release and I consider that they may be helpful rather than harmful.

Please return these to me for re-mailing. I will leave the matter for my secretary to handle, as I will be out of the city from August 9th to August 18th. They should, of course, be mailed to the newspapers a few days in advance of the date of August 19th, as fixed in the release.

Trusting this will be satisfactory, I am

Very truly yours,

Fred R. Bechdolt,
Deputy Attorney General.

State House Annex, 2d Floor,
102 North Senate Avenue
Indianapolis 4, Indiana

Enclosure
FRB:vlb

Plaintiff's Exhibit 98

STATE OF CONNECTICUT
HARTFORD
Attorney General's
Office

August 8, 1952

Mr. Richard Strouse
Room 3800
10 E. 40th Street
New York 16, N. Y.

Dear Mr. Strouse:

Enclosed you will find stationery for use in release on transportation of explosives, copy of which was sent to this office by Mr. Renz, and which meets with Attorney General Conway's approval.

In connection with the release, we do not use letterhead, rather when preparing mimeograph the heading is made as follows:

Press Release (Immediate or whatever time desired)
Attorney General George C. Conway
State Capitol
Hartford, Connecticut
Date

and placed on left side of paper.

Very truly yours,

Pauline MacFall,
Executive Assistant

Pl. Ex. No. 98A

August 19, 1952

EDITORS' NOTE:

I am taking the liberty of sending you the attached news release because I feel it is a story of particular importance to Connecticut.

Now before the Interstate Commerce Commission are the applications of 20 trucking firms which seek permanent authority to haul dangerous explosives over public highways and streets.

It is obvious that a sharp increase in the trucking of explosives presents a serious danger to the citizens of the state who use the highway, live near them or own properties bordering the streets and highways. A less obvious, but e qually real, threat is that any damage caused to highways by accidental explo- s ions must be repaired with money collected from the state's citizens in taxes.

Any setback in the state's highway program caused by such damage would mean that needed repairs and improvements would be delayed. Highway Commissioner Albert Hill testified before the ICC that Connecticut's road system is now "inadequate properly to handle today's traffic, to say nothing of that which will result from future expansion in the use of motor vehicles."

"It may be well," Mr. Hill testified, "to point out that Connecticut's situation is a particularly difficult one, since our State, though small in area is important as a corridor state. A great deal of traffic, particularly long-haul truck traffic, originates and terminates outside our State, so that much of the use of our roads is by trucks that do not use fuel bought in Connecticut. We have had great difficulty in raising sufficient taxes for our highway program."

I thought perhaps you might want this additional information for back- ground material.

George C. Conway

Press Release for AM papers of Wednesday, August 20
Attorney General George C. Conway
State Capitol
Hartford, Connecticut

HARTFORD, August 19 -- Connecticut joined four sister states and four cities today in a concerted effort to stem the tide of explosives-laden trucks which "represent potential tragedies on already-hazardous highways," State Atty. -Gen. George C. Conway reported.

The action was in the form of a brief filed with the Interstate Commerce Commission opposing the applications of 20 interstate trucking companies for permanent authority to transport dangerous explosives.

Conway said the brief was filed today by Massachusetts Atty. -Gen. Francis E. Kelly on behalf of Connecticut, Massachusetts, Rhode Island, Indiana, West Virginia, Cleveland, Pittsburgh, Peoria (Ill.) and St. Louis.

"Connecticut opposes the applications," Conway said, "solely on the grounds of safety. An accidental explosion could be catastrophic not only in its toll in lives, but also in the damage to highways, bridges and nearby properties. Truckloads of explosives represent potential tragedies on already-hazardous highways."

Conway said the governments signing the brief were among 35 intervenors opposing the applications filed by 20 trucking companies. He said many other groups which did not intervene in the cases stated their opposition.

Wholesale trucking of munitions and other dangerous explosives began during World War II when the ICC granted temporary authorities as a war emergency measure, Conway pointed out. Truckers now, he said, seek permanent authority in the explosives-hauling business. About 60 firms applied for permanent authority but by the time ICC hearings on the cases were completed this spring, all but 20 companies had dropped out. Conway said he understood this was due to the opposition of public-interest groups.

Connecticut was represented at the ICC hearings by Assistant Atty. Gen. Louis Weinstein and State Highway Commissioner Albert Hill.

Hill, a former research chemist, testified that "in the light of the steadily increasing accident hazard of highway transportation and the destructive potential of explosives, it is, in my opinion, contrary to the public interest to subject the traveling public, our highway systems and private properties to the dangers of unnecessary highway transportation of explosives."

"Further," he testified, "it is doubtful whether the public police system can properly assume the burden and responsibility of protecting such movements."

The brief summing up the views of Connecticut and the co-signers stated opposition to "wide-open permanent authority" for highway transportation of dangerous explosives and opposed any movement of explosives by highway except in "absolute and demonstrable necessity . . ."

It held that explosives "are hazardous commodities which in highway transportation constitute an unavoidable threat to the safety of the public, other highway traffic, properties bordering the highways, and the highways themselves and publicly owned bridges, tunnels, and other structures.

"A matter of particular concern," the brief continued, "is the hazard to school children created by the proximity of many large schools to the highways and the fact that a great many children must move to and from the schools by highway in school buses. These hazards are increased and will continue to increase by reason of the inadequacy of the public highways to handle the commercial and private traffic to which they are subjected."

Attorney-General Conway pointed out that Connecticut cannot afford extensive damage to its roadways and quoted Commissioner Hill's testimony that "it is impossible to say exactly what will happen in a wreck or accident involving explosives in transportation."

"Our intention," Conway said, "is to see that the accidents don't have a chance to happen."

Besides those signing the present brief, the truckers' applications are opposed by the American Automobile Association, the Council of State Governments, the National Congress of Parents & Teachers, the American Association of State Highway Officials, all major U. S. railroads, three railroad

brotherhoods, the states of Pennsylvania, New Jersey, Wisconsin, Delaware and Maryland, and New York City, Milwaukee, and Fort Wayne, Ind.

(Ohio took a somewhat different action on the same problem last month when it requested to the ICC that Riss and Company, a North Kansas City, Mo., trucking firm and one of the applicants now before the ICC, be put out of business for flagrant safety violations. Ohio cited Riss explosives trucks with 596 violations of law within a two and one-half year period.)

The 20 motor freight carriers against whom today's brief was filed are: Riss and Company, Pacific Intermountain Express Co., Garford Trucking, Inc., Kramer Brothers Freight Lines, Inc., Hancock Trucking, Inc., Interstate Motor Freight System, Wheelock Brothers, Inc., C. I. Whitten Transfer Co., Ringsby Truck Lines, Independent Truckers, Inc., Union Transfer Co., Harris Freight Lines, Inc., Spector Motor Service, Inc., Watson Brothers Transportation, Hughes Transportation, Inc., Red Ball Transfer Co., Eastern Motor Express, Inc., Mid-Continent Freight Lines, Inc., Prucka Transportation, Inc., and T. M. Zimmerman Co.

Six of the firms (Eastern, Garford, Hughes, Spector, Whitten and Riss) seek permanent authority to transport explosives through Connecticut. They operate a total of 63 trucks and 1,638 semi-trailers.

Plaintiff's Exhibit 99

STATE OF WEST VIRGINIA

CHARLESTON 5

Office of The Attorney General

August 11, 1952

Mr. Walter A. Renz
General Attorney
Lehigh Valley Railroad Co.
143 Liberty Street
New York, N. Y.

Dear Mr. Renz:

This will acknowledge receipt of your recent letter in response to our telephone conversation of July 22, concerning press release to be issued by the Attorney General of West Virginia, a draft of which was enclosed with your letter.

We approve the draft of the press release. We assume that you have supplied Mr. Strouse with a copy thereof, and are retaining the copy you sent the writer.

Pursuant to your request, we have today sent Mr. Strouse the envelopes and letterhead for use in having the release mimeographed and mailed to the newspapers of the state of West Virginia.

With kindest personal regards, I remain

Very truly yours,

W. BRYAN SPILLERS
Assistant Attorney General

WBS:LES

Copy to:

Mr. Richard Strouse
Room 3800
10 E. 40th Street
New York 16, N. Y.

Plaintiff's Exhibit 100

STATE OF NEW JERSEY

TRENTON 7
Department of Law and Public Safety
August 14, 1952

Richard Strouse, Esq.
Room 3800
10 East 40th Street
New York 16, New York

Dear Mr. Strouse:

In the absence of both Attorney General Parsons and Deputy Attorney General Cook on vacation, I am taking the liberty of acknowledging receipt of your letter of August 12th with enclosures.

Since it would be impossible to contact either Attorney General Parsons or Deputy Attorney General Cook by Friday morning, August 15th, the time mentioned in your letter as your deadline, I am taking the liberty of giving approval of release on behalf of Attorney General Parsons.

There is being forwarded to you today 300 envelopes and 15 letter-heads as per your request.

Very truly yours,

Benjamin C. Van Tine
Acting Attorney General

Enc.
bcvt;b

Plaintiff's Exhibit 101

CITY OF CLEVELAND
Department of Law

August 6, 1952

Walter A. Renz, Esq.
c/o Richard E. Strouse
Rm. 3800
10 East 40th Street
New York 16, New York

Dear Mr. Renz:

As per your request I am sending under separate cover approximately 450 letterheads.

I am not able to send the corresponding envelopes at this time as they are on order and it will be a matter of several weeks before they will be delivered.

Please advise whether you have some means of printing or stamping 'City of Cleveland - Department of Law' on blank envelopes as we are able to send these at the present time.

Very truly yours,

L. V. CORSI
Assistant Director of Law

LVC:h

Plaintiff's Exhibit 102

August 12, 1952

To: Gerry Swinehart

cc: Hammond & Hutchinson

From: Colburn Hardy

ERTC SITUATION REPORT FOR WEEK ENDING AUGUST 8, 1952

Major projects scheduled are:

(1) Hiring Indiana man, as the Number One Choice, Vic Peterson, cannot be persuaded.

(2) Meeting of Hardy and Marine with Indiana's Governor Schricker and Highway Commissioner Hadden to try to get their permission to have Highway Department release a survey on Indiana's Highways and Highway Financing. This is scheduled for Wednesday, August 13.

(3) Meeting with Bernie Kranowitz, consultant to New Haven Railroad, on Thursday, August 14 to discuss: (a) final report on Connecticut's highways and highway financing; (b) program in Connecticut; (c) procedure of cooperation between CB&A, Kranowitz, and Mr. Plante, vice-president in charge of public relations of New Haven railroad.

(4) Completing details of a series of releases urging ICC to stop trucking of explosives. The base release will come from the Massachusetts Attorney-General. Other stories, timed simultaneously, will come from attorney generals of at least four other states, and counsel of half-dozen major cities. This is scheduled for August 21.

(5) Pushing three story ideas: (a) "Trucks in Politics"; (b) Toll Roads and Truck Taxes Will Solve Highway Problem; (c) Expose of PAR -- with magazine department.

(6) Completing program of close cooperation with Railroad Brotherhoods for full support of Senator George Manning in November election.

Plaintiff's Exhibit 103

[Typewritten copy of photostat of Document 10435]

October 1, 1952

TO: Awards Committee

FROM: C. Colburn Hardy, Eastern Railroads Transportation Committee

AUGUST AWARD

To Dick Strouse and Gordon Sears for ingenuity and organizational ability that enlarged a routine legal action into a national news story that was simultaneously released by the attorneys-general of seven states and the corporation counsels of three major cities. Searching for some means to follow up the effective publicity against the truck-hauling of explosives, Strouse learned that the attorney general of Massachusetts had shown some interest in filing a brief of protest with the ICC.

Using clippings of earlier publicity on the public protest against the truckers' applications to haul explosives, Strouse and railroad lawyers persuaded the attorney-general to permit wide publicity.

When the lawyers indicated that other states were expected to file similar protests, Strouse arranged for simultaneous news releases from seven states . . . . Massachusetts, Rhode Island, Connecticut, Pennsylvania, New Jersey, West Virginia, Indiana. . . . and one city: Cleveland.

Using the stationery and envelopes of each attorney general, or counsel, Sears wrote ten separate stories. It was extremely important that these releases appear spontaneous and unrelated. The truckers, already smarting from previous publicity, were watching for some evidence of railroad activity. And, with elections coming up, it was equally important that no attorney-general be accused of improper influences.

To provide complete protection required ten different carefully-written stories, a mailing operation controlled to avoid suspicious duplication, and a full follow-up to assure properly-timed mailing.

Results: (1) a flood of clips, followed by a number of favorable editorials, and supplemented by local action by several communities along the main truck routes; and (2) comitments by several attorneys-general on legislation for more stringent state regulations on hauling explosives. The truckers filed their briefs at the same time. Clips presenting the railroad side of the story ran 10 to 1 over the news releases from the truckers.

Plaintiff's Exhibit 104

March 4, 1952

Delmar W. Beman, Jr., Esq.
Carl Byoir & Associates
829 National Press Building
Washington, D. C.

Dear Del:

I am enclosing several copies of Hill's testimony, as I understand you are out.

I am also enclosing six copies of an article from "The P. T. News." This is printed somewhere or other on the P.R.R. The article strikes me as a particularly good one, and sounds as if it had been written by a Brotherhood member. Note the several quotes from Interstate Commerce Commission reports describing explosions included in the list I gave you.

Yours truly,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-encl.

Plaintiff's Exhibit 104
Page one

THE P. T. NEWS

VOL. 3, No. 2. February 1952

IT CAN HAPPEN IN YOUR TOWN

Truck operators want to risk your life to make new profits by hauling dangerous explosives on the public highways. They are asking permission to subject towns and cities everywhere in this country to the dangers of explosions any single one of which could cause almost immeasurable damage, deaths and injuries. Presently, about 50 motor carriers are asking the Interstate Commerce Commission for permission to carry dangerous explosives over routes for which they already hold operating rights and over extensions of routes from which they hope to gain new traffic.

Mostly, of course, they are interested in obtaining military munitions traffic and are claiming that there is great need for their service. The evidence which will be presented on behalf of the railroads in opposing the petitions of the truckers will leave no doubt in the minds of Commission members that the truckers claim has little or no basis in fact. In only a very few instances have military installations been so located that truck service may occasionally be necessary - representatives of the armed services will make clear what these points are.

It is true that the Department of the Army has already indicated that many of the truck line requests are for the extension of service in places where there is no need for truck service. It has done so by informing the Commission that its interest in the pending proceedings is limited to a few specified areas while the truckers are asking for almost a free hand in accepting and routing shipments anywhere and everywhere.

Just how great is the danger to America's towns and cities from the possibility that the truckers may obtain permits to operate their already dangerous highway freighters made more dangerous with cargoes of high explosives and munitions? Some idea may be gained from the volume of such traffic carried by Class I railroads in 1950. They hauled

1,462,046 tons of ammunition and explosives -- the approximate equivalent of 100,000 truckloads.

Let's see just how much damage one such truckload of explosives actually caused on March 7, 1942, near Smithfield, N. C. There have been other, and later, instances of truck explosions. Ties has chosen this one because it is possible to quot directly from records of the Interstate Commerce Commission as reported in the case. The finding of the Commission was: Applicant found not fit, willing, and able properly to perform the service proposed, or to conform to the requirements of the Interstate Commerce Act and of our rules and regulations thereunder. Application denied.

Here is how the Commission describes the accident:

"In that accident, one of applicant's vehicles loaded with high explosives was struck by an automobile which failed to stopa at an intersecting highway, although a stop sign was posted. The driver of the car was killed as a result of the collision. A fire resulted which firemen were unable to extinguish, and approximately 2 hours later the vehicle's contents exploded killing 6 persons, includingthe 2 occupants of a passenger car which passed through a road block, and 4 guests of a nearby hotel. In addition, 40 persons were injured, and property damage in the amount of $525,274 resulted."

In the same case the Commission reported another accident in these words:

"The next accident investigated occurred on March 21, 1943, near Forest City, N. C., in which one of applicant's drivers lost control of the explosives-laden vehicle while rounding a curve and crashed into a bridge. The head driver was killed and a fire resulted setting off the explosives, but because of prompt action on the part of the relief driver in warning persons in the area, no casualties resulted from the explosion. The truck and cargo were completely demolished and considerable damage was done to the bridge and road."

And there was another reported which happened near Dalton, Ga., on April 4, 1946, when projectiles loaded in one of the truck company's vehicles exploded and completely demolished a home and other buildings near the scene. Property damage was $26,250. There were no casualties because, fortunately, there had been time to warn the occupants of the buildings.

The Commission commented on other violations involving trucks carrying explosives but the three mentioned above received greatest attention.

Even the most rigid adherence to rules of safety, proper vehicle maintenance and adequate driver training will not insure against the risk of such accidents happening. When they happen to an explosives-laden truck those near the scene had better hope they have time to clear out.

Consider, too, a great danger not directly involved in these three cases. Recently, the American Automobile Association has published a study of "The Jackknifing Menace" which highlights the dangers of just this one kind of truck mishap when the power unit goes one way, the trailer unit another, and woe be to the driver or pedestrian who may end up involved in the accident. Here are two paragraphs illustrating the serious concern with which this body representing the average motorist views present driving dangers:

"From the viewpoint of the motorist, at any rate, the continued threat of heavy truck units going out of control on the highways, in all types of weather, is enough to stir up a few nightmares.

"Even the most steel-nerved of drivers can find cause for worry in the prospect of his own automobile being dashed to destruction by a lumbering giant of the highway."

Add dangerous explosives to that picture!

The American Automobile Association has intervened in the hearings to protest the extension of rights to trucking companies which will permit them to haul dangerous explosives. It says such truck traffic

is a "great hazard" to highway users.

Railroaders, particularly engineers and firemen, are all too familiar with the sight of trucks stalled on highway-railroad crossings or of truck drivers speeding to get to a crossing ahead of a train. Many railroaders have lost their lives in such accidents involving trucks especially in accidents involving trucks hauling gasoline and other inflammables.

Add trucks loaded with dangerous explosives to that picture! Trucks and locomotives would be blown to bits and a frightening toll of dead and injured passengers and train crew members would be taken. Actually, a small community could be wiped out if such an accident happened in a populated area.

Despite the best efforts of the railroads, national safety organizations and state and local police authorities, such accidents involving trucks on highway crossings happen frequently. It's just too much to hope that trucks loaded with dangerous explosives will escape involvement in such an accident.

And the accident could happen in your town.

Turn over such an explosives-laden truck on the main street of your town. Turn one over near your school or your church. Turn one over near a local factory. Not pretty pictures!

Of course, the railroads' main interest in opposing such petitions of the truckers lies in retaining the business on the rails. It is important, revenue-producing traffic; handling it furnishes jobs for railroaders. And the railroads can plead their case only on the ground that they already furnish safe and adequate service.

Let the record of the five years of World War II be proof. The railroads had only three accidents involving shipments of explosives and munitions. There were no casualties among railroad employees or outsiders.

Just one trucking company had more accidents than all of the American railroads, killing and maiming many people in those accidents.

Here, then, is another instance in which railroader-citizens can do an important missionary job in letting their friends and neighbors know of the menace represented in permitting highway truckets to handle movements of explosives and munitions. No town will be free of the risk of having its name in the date line of some newspaper account reading: An explosives-laden truck exploded today on Main Street of (your town). There were .....killed and at last report, ... injured were being cared for in local hospitals, churches and schools. Damage is estimated at $.....

It can happen in your town!

Plaintiff's Exhibit 106

From-
RICHARD STROUSE
October 8, 1953

Lew Wickes:

You made the Times.

THE NEW YORK TIMES, SUNDAY, SEPTEMBER

Safe Rail Handling of Explosives Hailed

The skill and care with which railroad employeeshandle shipments of dangerous explosives was praised here yesterday by Lewin W. Wicks, Jr. Chairman of the Traffic and Law Committee of the Eastern Railroads, as one of the principal reasons why railroads have managed for thirty-one years to carry explosives without a fatality.

He attributed this record to the high quality of service performed by railroad men and the effectiveness of training and inspection programs given by the roads to personnel handling explosives.

The railroads, he explained, have made large investments in specially constructed boxcars and explosion-proof loading platforms and also have set aside safety zones for cars of explosives in freight yards. Other rules followed include the placing of explosive cars away from engines or from gasoline cargo in making up freight trains.

In Mr. Wicks' opinion the shipping of explosives by rail is safer than shipping them by truck where it is impossible to separate a trailer load of explosives from the tractor, its engine and gas tank.

Plaintiff's Exhibit 108

December 18, 1953

Mr. James Devine
c/o Carl Byoir & Associates
10 E. 40th Street
New York, N. Y.

Dear Jim:

The bill introduced by Senator Johnson, S. 903, relates to the transportation of "lethal munitions" in interstate commerce. A sufficient investigation on this subject might break loose the trucking problem. However, the bill actually arose out of the explosion at South Amboy. You will remember in that case the munitions involved (as distinguished from certain cars of commercial explosives) had been made by a private concern by the name of Kilgore for the Government of Pakistan, and there is clear evidence that they were not manufactured according to the best practices. The purpose of S. 903 is to prevent the manufacture and transportation of engines of war involving explosives except for or through our own Government. There has been very little question about the propriety of S. 903, and in my opinion it would be a most unfortunate thing if this were reopened and subject to further Congressional proceedings.

Very truly yours,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-encl.

Plaintiff's Exhibit 109

March 12, 1952

Delmar W. Berman, Jr., Esq.
Carl Byoir & Associates
829 National Press Building
Washington, D. C.

Dear Del:

For distribution on clip sheets, I understand you will take on the state governments (the Governor, Commissioner of Highways, as well as Attorney General and/or Chief of State Police), Congress, AAA, and opinion makers. I will cover the 100 or so witnesses (which will mean some overlap with your state government job, but not enough to try to avoid). I will also see whether the AAR, Brotherhoods, or PTA feel they can make some distribution.

Dick tells me he is ordering 1,500 copies, and I suggest 1,200 to you, 200 to me in Philadelphia, and 100 in New York.

Yours truly,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB

P.S. to Dick:

I will need over 100 in Philadelphia, but I am sure 200 as suggested above will cover it. To this extent, would change your plan of March 11.

L. W. W.

Richard Strouse, Esq.
Carl Byoir & Associates
10 E. 40th Street
New York, New York

Plaintiff's Exhibit 110

THE PENNSYLVANIA RAILROAD COMPANY
LEGAL DEPARTMENT

1740 Broad Street Station Building
Philadelphia 4, Pennsylvania

March 20, 1952

12972-Publicity

Dear

In view of your interest in the truck applications for transportation of explosives by highway, I am sending along a clip sheet showing cross-section of newspaper coverage on later portions of the hearings. By the time the hearings finally wound up, the vehement public opposition to the applications had resulted in the withdrawal of all but 19 of the original 60 applicants in the Consolidated Cases. The rest, however, are still pressing their applications before the I.C.C.

The results so far indicate that vigorous opposition combined with an active interest on the part of the public in prevent abuses of the highways can be very effective.

Very truly yours,

/s/ L. W. Wickes

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-encl.

Plaintiff's Exhibit 111

ASSOCIATION OF AMERICAN RAILROADS
PUBLIC RELATIONS DEPARTMENT
Transportation Building
WASHINGTON 6, D. C.

March 28, 1952

* * * * * * * *

Mr. Lewin W. Wickes, Jr.,
Assistant General Solicitor,
The Pennsylvania Railroad Company,
1740 Broad Street Station Building,
Philadelphia 4, Pennsylvania.

Dear Mr. Wickes:

I appreciate ~~your thoughtfulness in sending me, with your~~ letter of March 20, a copy of the clip sheet showing newspaper reactions to the proposed handling of explosives by highway carriers. I had already noted the withdrawal of most of the original applicants in this case, with no little respect and admiration for the manner in which the case was handled to bring about this result.

My profound compliments to you and Joe Hayes and the rest of the group who worked so diligently, devotedly and extensively.

With personal regards, I am

Sincerely yours,

/s/L. J. Kierman

Plaintiff's Exhibit 112

THE PENNSYLVANIA RAILROAD COMPANY
Legal Department
OPERATING COMMITTEE REPORT

1740 Broad St. Station Bldg.
Philadelphia, Pennsylvania

December 26, 1951

Gentlemen:

Re: Riss & Co. et al - MC-200, Sub. 84

To bring you up to date since our letter of November 20, this letter on the Washington hearings in the Riss Case is intended to cover primarily the operating side of our case, as we are enclosing a general summary prepared by Mr. Hays' office. Messrs. ronon and McCartney were sorely missed during the weeks when we presented most of our operating witnesses. However, with their energetic help, our preparation both for direct testimony and for cross-examination had been so thoroughly worked out that the presentation of our operating case went very smoothly. As our witnesses know, there was practically no unexpected cross-examination. For this reason and because of the excellent cooperation we received, we can say that the opposition gained small comfort from their cross-examination.

We want to pass along our thanks to all, and especially to those of our witnesses like Messrs. Broetzman, Chavis, Hammond and Simmons, who were not reached when first called and bore with us through another trip to Washington in order to testify. In spite of the difficulties we had with our schedule because we had to observe of the convenience of public witnesses intervening on our side, we lost the testimony of only two witnesses who could not appear. We were fortunate in having Mr. O'Toole to substitute for one of these.

As you know, in addition to our operating or service evidence, our opposition has been based also on the threat to the public as presented by Mr. Hays, and on the economic effect of loss of traffic on the railroads as presented by Mr. James. In addition to the strictly service evidence our committee introduced, we have been able to cooperate in the preparation and presentation of these other types of testimony.

On Monday, December 17, the hearings were continued to January 8, at Washington. The railroads' case is substantially completed, with little remaining except the presentation of certain documents.

Very truly yours,

/s/ L. W. Wickes
Lewin W. Wickes, Jr.
Assistant General Solicitor

OPERATING WITNESSES AND ATTORNEYS

AAR

AT&SF
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Mr. Arthur H. Gass, Chairman
Car Service Division
Association of American Railroads
Transportation Building
Washington, D. C.

Mr. D. A. Bumgartner
Asst. Supt. of Transp.
Santa Fe Rwy. System
80 E. Jackson St.
Chicago, Ill.

Mr. T. J. O'Connell
Chief, Yard & Terminal Operation
Baltimore & Ohio Railroad Company
Baltimore, Md.

Mr. Russell J. Hammond
Asst. to V.P. & General Manager
Boston & Maine Railroad
150 Causeway Street
Boston 14, Mass.

Mr. R. G. McGehee
Supt., Transportation Dept.
Chesapeake & Ohio Railway Co.,
Richmond, Va.

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Mr. C. H. Fischer
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CTR

EJ&E
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GN
Robert R. Cronon, Esq.
Assistant General Solicitor
Great Northern Railway Co.
St. Paul, Minn.

Mr. C. E. Cripper
Gen'l Supt. Terminals, CMStP&P
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Chicago, Ill.

Mr. J. J. O'Toole
Assistant General Manager
C. M. St. P. & P. R.R.
516 W. Jackson Blvd.
Chicago, Ill.

Mr. Norton P. Willis
Superintendent of Transportation
Central Railroad of New Jersey
Jersey City Terminal
Jersey City, N. J.

Mr. O. W. Limestall
Gen'l Supt. of Transportation
C.R.I. & P. R.R. Co.
LaSalle Station
139 W. Van Buren St.
Chicago 5, Ill.

Mr. E. V. Mill
Central Territory Railroads
1100 Madison Building
22 W. Madison St.
Chicago, Ill.

Mr. P. T. Moran
General Superintendent
Elgin, Joliet & Eastern Rwy. Co.
Joliet, Ill.

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Plaintiff's Exhibit 113
Page 1

CARL BYOIR & ASSOCIATES, INC.
TEN EAST FORTIETH STREET
NEW YORK 16, N. Y.

REYNOLDS GIRDLER
VICE PRESIDENT

Thought you would be interested in the attached.

R. G.

Plaintiff's Exhibit 113
Page 2

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Pennsylvania Railroad
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TRUCKAGE OF EXPLOSIVES ENDANGERS U.S. COMMUNITIES

Am[illegible] Star, Feb. 17 - Page A-[illegible]

Truckers Ask Permit To Haul Explosives Through D. C. Streets

Disclosure that applications of large trucking firms to send trucks loaded with high explosives over highways leading into and through Washington are under consideration by the Interstate Commerce Commission caused concern at the District Building yesterday.

Engineer Commissioner Bernard L. Robinson said he was unaware that the ICC was considering liberalization of its regulations governing movement of explosives. He intends to check on the ICC case, Gen. Robinson said, to make sure that District safety rules are not affected. Traffic Director George E. Kneipp also promised to keep the city heads advised about the pending ICC action.

Movements Requested.

At present the District strictly regulates the movement of explosives through the city, requiring individual permits for each movement by truck. City regulations would prevail regardless of what the ICC rules in the case, but a drastic increase in the number of requests for permits to move explosives through Washington could be expected, District officials said.

Behind the ICC hearings is a controversy which has raged for years to restrict the movement of high explosives over public highways.

Most of large trucking companies in the United States have asked the ICC to conserve them to haul high explosives. Most of the companies have requested permits for routes that would go through Washington.

The fight against the truckers is being led by the railroads and the American Automobile Association. During World War II almost all explosives moved in the United States were carried by the railroads.

Some Used During War.

Only a few truckers had permission to carry explosives. During the war, the ICC authorized some truckers to carry munitions, usually short hauls from a railroad terminal or a pier. Subsequently the trucks began competing for the long haul.

The railroads claim that despite this war-time authority they still control 97 per cent of the freight—incidental exclusives—moved in the United States during World War II.

The truckers found support in the Defense Department. During ICC hearings on the matter, Defense Department representatives stated that permanent authority to carry explosives by truck would be helpful in certain transportation when rail transportation was too slow.

The controversy boils down to a question of [illegible] involved also is the old conflict between railroads and truckers for business.

Objection Listed.

Opponents of the truckers' request list these objections: Truck haulage of explosives presents the constant hazard of explosions which would be particularly dangerous in crowded communities and on traffic bottlenecks like bridges and tunnels. Additional truck haulage of explosives demands additional safety precautions for which money and manpower are not available. Such haulage would add to the hazard of already overcrowded streets and highways.

The controversy goes back to 1947 when one trucker, Rice & Co., of Kansas City, asked that its temporary permit to haul explosives during the war period be made permanent. All such permits had expired in 1946 with the termination of the War Powers Act.

The ICC held a hearing and rejected the Rice application. The Rice company appealed to the courts and last April the Supreme Court ordered a new hearing.

Other Truckers Apply.

With this ruling—and the Defense Department's stand in favor of granting the authority—other truckers swarmed in with similar applications for permits. Approximately 60 applications were filed but since then all but the remaining 20 have been withdrawn.

The ICC held the Rice case again in Chicago last September. Last week further hearings opened in Washington to give the other applicants a chance to prove their claims to handle explosives. That is the stage the case has reached at the moment. Hearings will continue this week.

The District at present has strict police regulations governing the handling of explosives.

Any shipment of more than 50 pounds of explosives requires a permit from the chief of police. Trucks must stay out of the downtown area. One through truck route goes through the downtown area (specified zone can in the regulations) but a second skirts it.

Must Mark Trucks.

Explosive trucks must be marked by letters or a red flag with the word "explosives." Drivers can leave such trucks unattended and they can't go into repair shops while loaded. Lengthy regulations also govern shipments of "small amounts of explosives used in construction work and items handling such explosives.

Police Inspector John Agnew said last night explosives are shipped through the District by truck. The police regulations do not apply to military shipments, he added.

As a precaution, the police furnish motorcycle escorts for any large truck shipments of explosives that come through, Inspector Agnew said. This is not required by the regulations but is done as a safety measure.

Inspector Agnew pointed out that no matter what the ICC rules, trucks carrying explosives through the District would have to comply with local regulations in effect.

Springfield (Ill.) State Journal
Feb. 16 - FRONT

Hit Truckers' Plea To Haul Explosives Through City

By FRANK KUSET,
Copley Press Leased Wire.

Washington, Feb. 15—A broadside of criticism against the granting of permanent authority to trucking company applicants to haul dangerous explosives over public highways and streets was aired today at consolidated hearings on the applications before the Interstate Commerce Commission.

Lewis Wickes Jr., chairman of the traffic and law committee of eastern railroads, opened the hearings of applications for truck operations [illegible] permanent authority to haul explosives for the trucking firms under the I.C.C. can grant temporary authority at any time.

The I.C.C. has exclusive regulatory authority over the interstate transportation of explosives.

Backing Wickes on such organizations as the American Automobile Association, the National Congress of Parents and Teachers, the Council of State Governments, the American Association of State Highway Officials, and dozens of other cities and all major U. S. railroads.

Although the truckers' lobby [illegible] threats to prods the I.C.C. approval of the applications with the newly [illegible] of the defense department, [illegible] Gov. Hugh Cross of Illinois, has predicted that the ICC will

Continued on Page 2; Column 2.

Pittsburgh Sun-Telegraph, Feb. 17 - Page 12

Truckers Seek to Lift Curb on Explosive Hauls

More than 8,300 trucks and trailers will be authorized to haul dangerous explosives through the streets of Pittsburgh if applications now pending before the Interstate Commerce Commission are granted.

A survey reveals that 17 different trucking concerns have requested permanent authority to carry explosives along routes which include Pittsburgh. The 17 companies own and operate 713 trucks and 5,300 semi-trailers.

The increased transportation of dangerous explosives over public highways as the result of the growing defense program today poses a national problem, according to David Sentner, of the Sun-Telegraph Washington Bureau.

The ICC, conducting hearings in Washington on haulage of explosives by truck, is confronted with the following situation:

Numerous community groups, such as the National Congress of Parents and Teachers, vigorously oppose the granting of permanent authority to common carriers for transportation of dangerous explosives over public highways.

Mrs. Ethel G. Brown, of Los Angeles, chairman of the standing committee on legislation of the parent and teachers group, representing an enrollment of six and one-half million members, presented a resolution recording the following factors influencing the group's position:

Possibility of accidents involving school buses, passenger cars and commercial vehicles;

Likelihood of serious damage by explosions to subsurface utilities, bridges and tunnels;

Difficulty of policing mass highway transportation of explosives.

The executive committee of the recent Governors' Conference opposed unnecessary transportation of dangerous explosives over public highways, but conceded that motor carriers will have to transport a portion of the total explosives required by the defense effort.

The reasons cited for using motor carriers were listed as including:

States which lack adequate rail facilities and thus require explosives to be brought in by motor carriers.

The movement to decentralize American industry, particularly defense industries, resulting in location of many plants in areas not easily accessible by rail.

Motor transport of explosives is required to ship them from point of origin to railroads and from railroads to point of destination.

In some areas the transportation of explosives by motor carriers will be more economical and speedier than use of other types of carriers.

Joliet (Ill.) Herald-News, Feb. 16 - FRONT

Blasts Move to Permit Hauling Of High Explosives by Trucks

Witness Cites Danger in Cities Like Joliet, If Plea Is Granted

By FRANK KUSET

Washington, Feb. 16 — (Copley Press leased wire)—A broadside of criticism against the granting of permanent authority to trucking company applicants to haul dangerous explosives over public highways and streets was fired yesterday at consolidated hearings on the applications before the Interstate Commerce Commission.

Lewis Wickes, Jr., chairman of the traffic and law committee of the Eastern railroads, charged that the haulage of explosives by truck constitutes a serious danger and traffic hazard and that permanent authority is not necessary for the truckers since the ICC can grant temporary authority at any time.

The ICC has exclusive regulatory authority over the interstate transportation of explosives. [illegible] Wickes [illegible] committee of the [illegible] automobile association, the National Congress of Parents and Teachers, the Council of State Governments, the American Association of State Highway Officials, nine states, seven cities and all major U. S. railroads.

Although the truckers' lobby continues to press for ICC approval of the applications with the backing of the Defense department, at least one commissioner, former I.T. Gov. Hugh Cross of Illinois, has predicted that the ICC will place the safety of the general public on the nation's streets and highways above every consideration in ruling on the applications.

As an example of what approval of the truckers' applications would mean to a key transportation state like Illinois, Wickes presented facts and figures to show the impact on such cities as Joliet and Springfield.

He said that Illinois is particularly involved in these applications because two of the nation's largest arsenals are located at Joliet and Rock Island.

If the I.C.C. grants the applications, Wickes continued, more than 6,800 trucks and trailers would be authorized to haul dangerous explosives thru the streets of Springfield.

A survey at Springfield shows that 22 trucking concerns have requested permanent authority to carry explosives along routes which include the state capital. The 22 companies own and operate 818 trucks and 6,014 semi-trailers.

Five of the companies specify routes in their applications which pass thru Springfield; the others requesting blanket authority to carry explosives from any location in certain listed states, including Illinois, to any other location in the same states.

GRANTING of the applications would authorize all 6,832 trucks and semi-trailers owned by the 22 companies to haul munitions and other highly dangerous explosives thru Springfield.

The 22 companies are among 37 which now have applications on file before the ICC for permanent authority to haul explosives along most major U. S. highway routes, according to Wickes.

In the case of Joliet, Wickes said, more than 7,350 trucks and trailers would be authorized to haul dangerous explosives thru the city's streets if the applications now before the consolidated hearing of the ICC are granted.

The Wickes survey showed that 21 different trucking companies have requested permanent authority to carry explosives along routes and streets that include Joliet. The 21 companies own and operate 878 trucks and 6,478 semi-trailers.

[illegible] of the companies specify routes which pass thru Joliet [illegible] certificates of application. The others have requested blanket authority to carry explosives from any location in certain listed states, including Illinois, to any other location in the same states.

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Under provisions of the applications, few American communities are not on at least one long haul route between a depot and port, a munitions factory or a proving ground.

Baltimore [illegible], Feb. 17 - F[illegible]

Civic Groups Oppose Use Of Highways To Transport Explosives

By DAVID SENTNER
Sunday American Washington Bureau.

WASHINGTON—The increased transportation of dangerous explosives over public highways as the result of the growing defense program poses a national problem.

The Interstate Commerce Commission, conducting hearings on haulage of explosives by truck, is confronted with the following situation:

Numerous community groups such as the National Congress of Parents and Teachers, vigorously oppose the granting of permanent authority to common carriers for transportation of dangerous explosives over public highways.

PRESENTS RESOLUTION.

Mrs. Ethel G. Brown of Los Angeles, chairman of the standing committee on legislation of the parent and teachers group, representing an enrollment of six and one half million members, presented a resolution recording the following factors influencing the group's position:

Possibility of accidents involving school busses, passenger cars and commercial vehicles.

Likelihood of serious damage by explosions to subsurface utilities, bridges and tunnels.

Difficulty of policing mass highway transportation of explosives.

The executive committee of the recent Governors' conference opposed unnecessary transportation of dangerous explosives over public highways but conceded that motor carriers will have to transport a portion of the total explosives required by the defense effort.

REASONS LISTED.

The reasons cited for using motor carriers were listed as including:

States which lack adequate rail facilities and thus require explosives to be brought in by motor carriers.

The movement to decentralize American industry, particularly defense industries, resulting in location of many plants in areas not easily accessible by rail.

Motor transport of explosives is required to ship them from point of origin to railroads and from railroads to point of destination.

In some areas the transportation of explosives by motor carriers

Turn to Page 2, Column 7

OPPOSE HAULING OF EXPLOSIVES

Continued from First Page

riers will be more economical and speedier than use of other types of carriers.

The American Automobile Association has called on the ICC to prohibit transportation of explosives over public highways except in cases of genuine necessity.

More than 8,100 trucks and trailers will be authorized to haul dangerous explosives through the streets of New York city if applications now pending before the ICC are granted.

BALTIMORE AFFECTED.

A survey reveals that 19 different trucking concerns have requested permanent authority to carry explosives along routes which include New York city. The 19 companies own and operate 466 trucks and 4,652 trailers.

Nearly 4,300 trucks and trailers will be authorized to haul dangerous explosives through the streets of Baltimore, if applications now pending before the ICC are granted.

A survey reveals that 16 different trucking concerns have requested permanent authority to carry explosives along routes which include Baltimore. The companies own and operate 477 trucks and 3,805 semitrailers.

Flint (Mich.) Journal
Feb. 16 - Page 3

Trucking Issue Involves Flint

Firms Operating Here Seek Explosives O.K.

Seven firms operating 3,500 trucks could haul explosives [illegible] before the Interstate Commerce Commission in Washington [illegible] proved.

Twenty-nine trucking companies are seeking authority to carry the explosives. Railroads and other opponents are opposing the request.

[illegible] Trucking Association [illegible] Department of Defense wants the explosives to be carried by trucks, that the risk is no greater than that on the railroads and that trucks are needed for speed.

Both sides concede the traffic is a source of revenue to them, the railroads attempting to hang onto the explosive transportation business they have had to the exclusion of trucks, except for the war period, and the trucking companies seeking a new source of revenue.

from any location in certain listed states.

Under provisions of the applications few American communities are not on at least one long haul route between a depot and port, a munitions factory or a proving ground.

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York Era (Pa.), Feb. 17

16 Firms Would Haul Explosives In City

WASHINGTON, Feb. 16 — Operators of 16 fleets of trucks would be authorized to haul explosives through the city streets of York, spokesmen for the Eastern Railroads charged here today, if the Interstate Commerce Commission approves a pending application by truckers for unlimited rights to carry high explosives.

As to the transporting of high explosives through York, Mayor Howard E. Eyster said Saturday night, "that's something I'll have to look into." He added that York has no ordinance, as far as he knows, which requires the driver of an explosives-laden vehicle to secure a permit to transport it through the city.

However, he said, the usual practice is for such truck drivers to stop outside the city limits and call the city police for an escort through York. "But we still don't know how many explosives trucks may be going through the city without our knowing about it."

City police officers said Saturday night that as soon as the driver of an explosives truck telephones for an escort he gets it immediately. This, they pointed out, is about the only precaution they can take.

A regular route through the city would be maintained by Kramer Brothers Freight Lines, Inc., with 43 trucks and 200 semi-trailers, the spokesmen for the railroads asserted.

At the same time, 15 other trucking companies are asking unlimited right to haul explosives on irregular routes anywhere in the state of Pennsylvania.

Railroads Protest

Lewis Wickes Jr., chairman of the Traffic and Law Department, Eastern Railroads division of the Association of American Railroads, made public the local data in connection with the railroads' fight against the petition of the trucking industry to be allowed to haul explosives on the highway.

At present most explosives move by railroad, with trucking limited to the distance between railhead and the mines or construction projects where the explosives are to be used.

List Arguments

Truckers are arguing that the national defense program, which has brought about an increase in the manufacture of explosives, requires the service of their segment of the transportation industry. Counsel for the railroads is countering with arguments that this will pose a serious threat to the cities through which the truck lines operate.

Railroads are pointing to their safety record of World War II in which thousands of tons of high explosives were moved safely to seaports for shipment to American forces overseas, and contrasting it with several disastrous explosions which have occurred when trucks carrying explosives met with accidents on the highway.

The ICC will continue hearing arguments in the case this week.

Milwaukee Sentinel: Feb. 17 - Page 5

Explosives A Problem On Highways

By DAVID SENTNER
Washington Bureau

WASHINGTON, Feb. 16—Increased transportation of dangerous explosives over public highways because of the growing defense program today poses a national problem.

The Interstate Commerce Commission conducting hearings on haulage of explosives by truck, is confronted with the fact that numerous groups, such as the National Congress of Parents and Teachers, oppose granting permanent authority to common carriers for transportation of dangerous explosives over public highways.

RESOLUTION OFFERED

Mrs. Ethel G. Brown of Los Angeles, chairman of the standing committee on legislation of the parent and teachers group, representing 6½ million members, presented a resolution regarding the following factors influencing the group's position:

Possibility of accidents.

Likelihood of serious damage by explosions to subways with men, bridges and tunnels.

Difficulty of policing mass highway transportation of explosives.

The executive committee of the recent Governors' Conference opposed unnecessary transportation of dangerous explosives over public highways. But they conceded that motor carriers will have to transport a portion of the total explosives required by the defense effort.

Other reasons for using motor carriers were given:

Omaha World Herald, Feb. 17 - Page 2

Truckers Ask Permanent Right on Explosives

By DAVID SENTNER
Washington Bureau

WASHINGTON, Feb. 16—Whether to give 26 trucking concerns permission to haul explosives permanently over routes covering most of the United States—only Montana and North Dakota excepted—is at issue now before the Interstate Commerce Commission.

The hearing began Wednesday and the lineup stands something like this:

Against giving the truckers such an okay: The American Automobile Association, Council of State Governments, American Association of State Highway Officials, National Congress of Parents and Teachers, the major United States railroads and various cities, states railroad brotherhoods and others.

For granting the truckers permission to haul explosives: The truckers concerned, the Department of Defense, some explosives experts.

The opposition claims that haulage by explosives constitutes a definite danger, a traffic hazard, and that permanent approval at is not necessary—that the ICC can grant temporary authority when it wishes.

The proponents say the national defense effort requires permanent authority so trucks to do such hauling, and that it isn't any more dangerous than by rail.

The ICC gave the truckers authority to handle explosives during the war. On June 30, 1946, that authority terminated except for the Kansas City, Missouri-Kansas City, Rice and Company with its fleet of 481 trucks, tractors and 787 semi-trailers.

The next year, Rice filed application to make that temporary authority permanent. The application was rejected, but later a Supreme Court decision found the trucking concern entitled to a new hearing. At the new hearing, which ended last January 28, the Defense Department was on the side of Rice, stating it would be helpful considerably to have truck haulage for explosives.

With the second Rice hearing concluded, the ICC now is hearing a similar petition from 26 other truckers, consolidated into a single case.

Among organizations on record in opposition are the Nebraska Sheriffs and Peace Officers Association, the Laramie Wyo., Chamber of Commerce, the Iowa State Highway Commission and the Iowa Department of Public Safety.

Lancaster (Pa.) News, Feb. 17 - [illegible]

16 Firms Would Haul Explosives In City

WASHINGTON, Feb. 16 — Operators of 16 fleets of trucks would be authorized to haul explosives through the city streets of Lancaster, spokesmen for the Eastern Railroads charged here today, if the Interstate Commerce Commission approves a pending application by truckers for unlimited rights to carry high explosives.

(Mayor Roddis C. Bare, asked for his views on the carrying of explosives through Lancaster by truck, said yesterday that he has not heard the complete facts concerning the truckers' application, and he declined comment.

(Actually, a city ordinance prohibits the transportation of explosives through the city of Lancaster without express permission of the mayor. Chapter 3, Art. 1, Sec. 3 of the General Ordinances of the City of Lancaster, reads:

(No person, or persons, partnership nor corporation, shall . . . use any explosives in any building within the limits of the City of Lancaster, or transport the same in, about or through the said city unless he or it shall have first obtained a license to what effect from the Mayor of the city. Such license shall be granted upon a sworn application in writing stating . . . in case the same is to be transported through the city, the means and manner in which the same is to be done.

(The ordinance further states that "No license shall be granted by the Mayor unless he is satisfied that the same may be granted without endangering the public safety."

(Police say the ordinance has been largely ignored by truckers, especially during the war.)

A regular route through the city would be maintained by Kramer Brothers Freight Lines, Inc., with 43 trucks and 200 semi-trailers, the spokesmen for the railroads asserted.

At the same time, 15 other trucking companies are asking unlimited right to haul explosives on irregular routes anywhere in the state of Pennsylvania.

Railroads Protest

Lewis Wickes Jr., chairman of the Traffic and Law Department, Eastern Railroads division of the Association of American Railroads, made public the local data in connection with the railroads' fight against the petition of the trucking industry to be allowed to haul explosives on the highway.

At present most explosives move by railroad, with trucking limited to the distance between railhead and the mines or construction projects where the explosives are to be used.

List Arguments

Truckers are arguing that the national defense program, which has brought about an increase in the manufacture of explosives, requires the service of their segment of the transportation industry. Counsel for the railroads is countering with arguments that this will pose a serious threat to the cities through which the truck lines operate.

Railroads are pointing to their safety record of World War II in which thousands of tons of high explosives were moved safely to seaports for shipment to American forces overseas, and contrasting it with several disastrous explosions which have occurred when trucks carrying explosives met with accidents on the highway.

The ICC will continue hearing arguments in the case this week.

Milwaukee Sentinel, Feb. 17 - Part 1

City Asks Voice on Routes For Explosive Truck Loads

The City of Milwaukee has interposed in the proceedings of a federal agency in an effort to keep trucks hauling dangerous explosives away from the city and its residents.

A number of trucking companies seek permanent authority from the Interstate Commerce Commission to carry explosives over public highways.

The records have been subpoenaed by the defense department.

Almost [illegible] hearing [illegible], Atty. Harold [illegible], and various counsel of [illegible] were [illegible] through [illegible] examination.

Elmer Smith, attorney, has requested the opportunity to argue before the ICC against approval of such routes in the hope that can be kept out entirely or at least restricted.

The ICC, if it sees fit, establishes routes regulating the shipment of explosives that will supersede city ordinances, according to Smith.

"We have the right of [illegible] recommendation," he says, "but we can't interfere with interstate commerce."

Smith said that from his observations at a recent ICC hearing at Washington, D. C., "it appears the armed forces are backing the trucking [illegible] applications."

The city will be concerned over the proposed routes if they enter Milwaukee County, he said.

Louisville Times, Feb. 22

O.K. on Hauling Explosives Through City Sought by 8 Firms Owning 165 Trucks

I.C.C. Holds Quiz on Applications

By LORENZO MARTIN
Times Washington Correspondent

Washington, Feb. 22—More than 165 trucks would be authorized to haul high explosives through Louisville streets if applications now pending before the Interstate Commerce Commission are granted.

Opponents of the proposed liberalization of regulations which the I.C.C. has under consideration in hearings here, said today that a survey discloses that 11 trucking companies has requested permanent authority to carry explosives along routes which include Louisville.

Before the reopening of the hearings, three of these 11 concerns withdrew their applications. The remaining eight operate 165 trucks and 2,366 semi-trailers.

In their applications three of these eight concerns specify routes which pass through Louisville.

These are the B.B.&I. Motor Freight, Inc., operating 26 trucks and 81 semitrailers; the Interstate Motor Freight System, operating 13 trucks and 667 semitrailers; and Hancock Trucking, Inc., operating 69 trucks and 288 semi-trailers. The three latter concerns each specify two routes through Louisville, while the first-named designates one.

Other Firms Listed

Of the firms which have withdrawn their applications, two specified routes through Louisville. Dennis Truck Line, Inc., had asked authority for two routes for its six trucks and 28 semitrailers it operates; while Standard Freight Lines, Inc., operating three trucks and 51 semitrailers, had specified three routes through Louisville.

Behind the hearings is a controversy which has raged for years over restricting movement of high explosives over highways. The fight against the truckers is being led by the railroads and the American Automobile Association. Before World War II almost all explosives moved in this country were carried by the railroads.

During that conflict, however, the I.C.C. authorized some truckers to carry munitions, usually on short hauls from a railroad terminal or a pier.

Subsequently, the trucks began competing for the long hauls. They found recent support in the Defense Department, whose representatives stated that permanent authority to carry explosives by truck would be helpful in certain emergencies when railroad transportation was too slow.

Indiana Ordnance Case

This case involves two primary questions. One is safety, while the other is the old conflict between the railroads and the truckers. This controversy goes back to 1947 when one trucker, Elm & Co., Kansas City, which hauls explosives through Louisville to the Indiana Arsenal, asked that its temporary permit to haul explosives during the war period be made permanent. After a hearing, I.C.C. rejected the Elm application, but the company appealed to the courts and the Supreme Court last April ordered a new hearing.

"As a result of the ruling and the Defense Department's stand, numerous other truckers also filed applications. About 60 applications were filed but since then slightly more than half have been withdrawn, the I.C.C. heard the Elm case again in Chicago last February, but began additional hearings here last week to afford [illegible] opportunity to [illegible] interest.

El Dorado (Ark.) Times Feb. 16 - [illegible]

HIGHWAY TORPEDOES

If truck operators are given free reign over America's public highways, our roads may soon become peck-marked with death and destruction. The big brass of truckdom wants to risk our life to make new profits hauling munitions on highways. They are asking permission of the Federal Government to bring new and greater danger to our modern trails which are already, at best, narrow ribbons of concrete upon which packed streams of motorists death-dodge each other in a nerve-wracked race with time.

Hitting newspaper headlines everyday are grisly accounts of munitions trucks exploding on the highway, taking lives with them.

Half of the one million human beings mashed into death on our highways in half a century were killed after 1936, when motorized box-cars began to usurp the road.

Trucking interests are asking too much when they propose to turn the highway into a no-man's land in which a trip to anywhere involves a fight for space with careening, partially controlled mobile torpedoes, which is surely what munitions-laden truck freighters are.

A Texarkana man was seriously injured recently as his pick-up truck was torn in half on highway 82 when a heavy truck loaded with dangerous explosives hurtled into it. Whoever was at fault in the collision is not important here, but it is significant that the driver of the explosive-laden truck said "he could not stop the truck because of the risk of over-turning dangerous explosives." If it was a risk in this case, it is a risk anytime, anywhere.

Louisville Times, Feb. 17 - Page 23

National Groups Fight Trucking of Explosives

By DAVID SENTNER
(N.E.A. Washington Bureau)

WASHINGTON, Feb. 16—The increased transportation of dangerous explosives over public highways as the result of the growing defense program today poses a national problem.

The Interstate Commerce Commission, conducting hearings on haulage of explosives by truck, is confronted with the following situation:

Numerous community groups, such as the National Congress of Parents and Teachers, vigorously oppose the granting of permanent authority to common carriers for transportation of dangerous explosives over public highways.

OTHER FACTORS.

Mrs. Ethel G. Brown, of Los Angeles, chairman of the standing committee on legislation of the parent and teachers group, representing an enrollment of 6,000,000 members, presented a resolution recording the following factors influencing the position:

Possibility of accidents involving school buses, passenger cars and commercial vehicles;

Likelihood of serious damage by explosions to subways, utilities, bridges and tunnels;

Difficulty of policing mass highway transportation of explosives.

The executive committee of the recent Governors' conference opposed unnecessary transportation of dangerous explosives over public highways, but conceded that motor carriers will have to transport a portion of the total explosives required by the defense effort.

REASONS LISTED.

The reasons cited [illegible] motor carriers were [illegible] as follows: [illegible] because rail facilities are [illegible] and these require explosives to be brought in by motor carriers.

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Boston Record, Feb. 18 - Page 2

Hub TNT Trucking Peril Stirs Protest

Mayor Hynes and a group of Boston legislators yesterday planned vigorous protests against petitions pending before the Interstate Commerce Commission which would give permanent authority to 4300 trucks and trailers to carry dangerous explosives through Boston and other Massachusetts cities.

As soon as he was informed of the intentions of ten national trucking firms as revealed at hearings before the ICC in Washington, Mayor Hynes said:

SENDING TELEGRAM

"I shall send a telegram to the ICC on Monday, telling the members that Boston has now reached the traffic saturation point and that our biggest problem is trailer trucks. We cannot add the hazard of allowing trucks loaded with explosives to pass through the city, except for emergency defense needs.

At the same time, after a check-up revealed that the state of Massachusetts has practically no supervision over any trucks, no matter what their cargo, if they hold ICC licenses, Rep. Edmund J. Donlan of West Roxbury said he would take steps to bar explosive-laden trucks from streets in Boston and other Massachusetts cities.

"I intend to file a resolution with the clerk of the House today and have same of it sent to the ICC, in which Congress will be memorialized, asking that no long vehicles carrying dangerous explosives, except in cases of emergency defense needs, be allowed to pass through populated cities and towns, and then only under Defense Department supervision."

Donlan was immediately joined by Rep. Richard Fond Feeney; Public Safety Com. Walter F. Lafferty; Rep. John Joseph Timothy J. Mahoney, who said they would back his resolution.

Senators William Keenan of Dorchester and Michael LoPresti of Ward, Boston, said they would file in the Senate a resolution similar to that of Rep. Donlan.

Passage of guided-missiles

Continued on Page 8

trucks and trailers through densely populated districts is a hazard fraught with dangers that are frightening to contemplate. We must bar such trucks from our streets."

Sen. Charles Innis, from Back Bay, supported the view, with the proviso that nothing be done to interfere with the defense program.

During the last war, explosives were carried by Army and Navy trucks or under the supervision of the military without any incident.

The consensus of the mayor and members of the Legislature was that if emergency defense demands the use of private trucks for transport of explosives, all such transportation should be under the rigid supervision of the Defense Dept.

At present, the State Public Utilities Dept. has no control whatever over trucks from out of state which have ICC authority to enter or cross the Massachusetts borders.

The state fire marshall's office can oblige licensed trucks to meet a minimum safety requirement, but cannot forbid transport of explosives otherwise.

Boston American, Feb. 18

Hub, State Fight Bid For TNT Truck Okay

Moving swiftly to kill proposals which would permit 4300 trucks and trailers to carry dangerous explosives through Boston and other Bay State cities, Mayor Hynes and group of legislators today planned vigorous protests to be presented to Congress and the Interstate Commerce Commission.

Informed of the intentions of 10 national trucking firms to transport the explosives permanently through Boston and other metropolitan areas, Mayor Hynes said:

"I shall send a telegram today to the ICC, telling the members that Boston has now reached the saturation point in traffic and that our biggest problem is trailer trucks. We cannot add the hazard of allowing trucks loaded with explosives to pass through the city, except for emergency defense needs."

A group of legislators announced, at the same time, that they would take action today in both the House and Senate to bring forcefully to the attention of Congress and the ICC the dangers inherent in the authority sought by the truckers.

In the House, representatives agreed on the wording of a resolution memorializing Congress and asking that private trucks be forbidden to carry dangerous explosives through populated areas, except in case of a national defense emergency. The representatives asked, too, that when such an emergency arises the work be supervised by the Defense Dept.

The need for some national policy regarding the transportation of explosives was pointed up when a check with regulatory departments revealed that no public agency in the state has authority to bar trucks from other states operating under an ICC license.

John F. Kelleher, head of the vehicle division of the fire marshal's office, said his division can make truckers conform to certain minimum safety standards in connection with size and equipment of the carrier, warning signs and the number of the operating crew. He said that was the only control that could be exercised by his office.

The recent governors' conference went on record as opposing to truck transportation explosives except in a national emergency.

Boston Advertiser
Feb. 17 - Page 1

DEMAND TNT TRANSIT CURBS

By DAVID SENTNER
(Sunday Advertiser Washington Bureau)

WASHINGTON—The increased transportation of dangerous explosives over public highways as the result of the growing defense program today poses a national problem.

The Interstate Commerce Commission, conducting hearings on haulage of explosives by truck, is confronted with the following situation:

Numerous community groups, such as the National Congress of Parents and Teachers, vigorously oppose the granting of permanent authority to common carriers for transportation of dangerous explosives over public highways.

CITE OBJECTIONS

Mrs. Ethel G. Brown, of Los Angeles, chairman of the standing committee on legislation of the Parent and Teachers group, representing an enrollment of six and one-half million members, presented a resolution recording the following factors influencing the group's position:

Possibility of accidents involving school buses, passenger cars and commercial vehicles;

Likelihood of serious damage by explosions to subsurface utilities, bridges and tunnels;

Difficulty of policing mass highway transportation of explosives.

The executive committee of the recent governors' conference opposed unnecessary transportation of dangerous explosives over public highways but conceded that motor carriers will have to transport a portion of the total explosives required by the defense effort.

LACK RAIL FACILITIES

The reasons cited for motor carriers were listed as including:

States which lack adequate rail facilities and thus require explosives to be brought in by motor carriers.

The movement to decentralize American industry, particularly defense industries, resulting in location of many plants in areas not easily accessible by rail.

Motor transport of explosives is required to ship them from point of origin to railroads and from railroads to point of destination.

Nearly 4,300 trucks and trailers will be authorized to haul dangerous explosives through the streets of Boston if applications now pending before the ICC are granted.

A survey reveals that ten different trucking concerns have requested permanent authority to carry explosives along routes which include Boston. The ten companies own and operate 466 trucks and 3,770 semi-trailers.

Continued on Page 4

needs."

The legislators said they would take action in the House and Senate today to bring forcefully to the attention of Congress and the ICC the dangers inherent in the authority sought by the truckers.

They will ask in a resolution memorializing Congress that the work be supervised by the Defense Department when it is necessary to transport explosives through populated places especially large cities.

John F. Kelleher, head of the vehicle division of the fire marshal's office, said his office is now restricted in supervision of transportation of explosives.

The division, he said, can make truckers conform to certain minimum safety standards concerning the size and equipment of carriers; warning signs and the number of operating crew. Otherwise, he added, it has no authority.

Albany Times-Union, Feb. 17 - Page C-7

ICC Gets Pleas to Truck Explosives Through Area

By DAVID SENTNER
The Times-Union Washington Bureau

WASHINGTON — The increased transportation of dangerous explosives over public highways as the result of the growing defense program today poses a national problem.

More than 4,000 trucks and trailers will be authorized to haul dangerous explosives through the streets of Albany if applications now pending before the ICC are granted.

A SURVEY reveals that 10 different trucking concerns have requested permanent authority to carry explosives along routes which include Albany. The 10 companies own and operate 466 trucks and 3,692 semi-trailers.

The Interstate Commerce Commission, conducting hearings on haulage of explosives by truck, is confronted with the following situation:

NUMEROUS community groups such as the National Congress of Parents and Teachers, vigorously oppose the granting of permanent authority to common dangerous explosives over public highways.

Mrs. Ethel G. Brown, of Los Angeles, chairman of the Standing Committee on Legislation of the Parent and Teachers group, representing an enrollment of six and one-half million members, presented a resolution recording the following factors influencing the group's position:

Possibility of accidents involving school buses, passenger cars and commercial vehicles.

LIKELIHOOD of serious damage by explosions to subsurface utilities, bridges and tunnels.

Difficulty of policing mass highway transportation of explosives.

The executive committee of the recent Governor's conference opposed unnecessary transportation of dangerous explosives over public highways but conceded that motor carriers will have to transport a portion of the total explosives required by the defense effort.

The reasons cited for using motor carriers were listed as including:

States which lack adequate rail facilities and thus require explosives to be brought in by motor carriers.

THE MOVEMENT to decentralize American industry, particularly defense industries, resulting in location of many plants in areas not easily accessible by rail.

Motor transport of explosives is required to ship them from point of origin to railroads and from railroads to point of destination.

In some areas the transportation of explosives by motor carriers will be more economical and speedier than of other types of carriers.

The American Automobile Ass'n has called on the ICC to prohibit transportation of explosives over public highways except in cases of genuine necessity.

More than 5,100 trucks and trailers will be authorized to haul dangerous explosives through the streets of New York City if applications now pending before the ICC are granted.

A survey reveals that 15 different trucking concerns have requested permanent authority to carry explosives along routes which include New York City. The 15 companies own and operate 466 trucks and 4,692 trailers.

Buffalo Courier-Express
Feb. 17 - Page 8

Right to Truck Explosives In Buffalo Asked

Case Before ICC, Rail Leader Says

Courier-Express Washington Bureau

Washington, Feb. 16—More than 5,100 trucks and trailers will be authorized to haul dangerous explosives through the streets of Buffalo if applications before the Interstate Commerce Commission are granted.

[illegible] charged yesterday by [illegible], Jr., chairman of the [illegible] Committee [illegible] of a survey on the ICC docket.

Wickes said that the City of Buffalo is considering intervening to protest granting the truckers permission to carry the explosives. Intervenors already include the cities of New York, Pittsburgh and Philadelphia and the states of Pennsylvania and Massachusetts.

The Wickes survey said that 15 trucking concerns have requested permanent authority to carry explosives along routes which include Buffalo. These companies, the survey said, own and operate 466 trucks and 4,692 semi-trailers.

Three of the companies specify routes which pass through Buffalo in their applications. The others have requested blanket authority to carry explosives along any location in certain listed states, including New York, to any other location in the same states.

The trio of firms requesting permission to use regular routes through Buffalo were listed by Wickes as the Interstate Motor Freight System, which has 13 trucks and 647 semi-trailers; Kramer Brothers Freight Lines, Inc., with 43 trucks and 166 semi-trailers, and Rice & Co., Inc., having 787 [illegible]

Truckers are supported in their application by the Defense Department, which claims that the national defense effort demands greatly increased haulage of explosives by truck, and that such haulage is no more dangerous than by rail. The latter contention seems debatable, considering that rail transport is less complex and difficult to regulate, and less subject to weather hazards than road traffic.

It appears well in order for Buffalo to join in intervening against the truckers' application along with other large cities and two states. Though such opposition may pose a complication to the conduct of the national defense effort, the end result more likely would be to bring about stricter legal requirements for the haulage of explosives through traffic, a privilege attended by the gravest risks. For one, special escorts before and behind trucks of explosives might be considered an indispensable safeguard. In any case, it seems a practical question whether haulage of high explosives through population centers is warranted on any count, when it might be detoured on an indicated concession to the requirements of public safety.

Buffalo Courier-Express, Feb. 19 - EDIT

Trucking Explosives Would Greatly Endanger Buffalo

Fifteen trucking concerns have requested permanent authority of the Interstate Commerce Commission to carry explosives along routes which include Buffalo. Lewis Wickes, Jr., chairman of the Traffic and Law Committee for Eastern Railroads, charged that more than 5,100 trucks and trailers will be authorized to haul dangerous explosives through the streets of Buffalo if the applications before the ICC are granted. He said the City of Buffalo is considering intervening to protest against permitting truckers to carry the explosives, and that intervenors already include the cities of New York, Pittsburgh and Philadelphia and the States of Pennsylvania and Massachusetts.

The truckers are supported in their application by the Defense Department, which claims that the national defense effort demands greatly increased haulage of explosives by truck, and that such haulage is no more dangerous than by rail. The latter contention seems debatable, considering that rail transport is less complex and difficult to regulate, and less subject to weather hazards than road traffic.

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New Bedford (Mass.)
Standard-Times
Feb. 18 - Page 16

Plan to Truck Explosives To Be Opposed

BOSTON, Feb. 18 (AP)—Mayor John B. Hynes and a group of Massachusetts legislators said last night they would protest petitions which eventually would allow 4,300 trucks to transport explosives through Massachusetts.

The group said the granting of petitions by 10 national trucking firms pending before the Interstate Commerce Commission would open the way for the trucks to operate in this State.

The mayor said he would inform the commission tomorrow that "Boston has now reached the traffic saturation point and that our biggest problem is trailer trucks.

"We cannot add the hazard of allowing trucks loaded with ex[illegible]

Springfield (Mass.) Union
Feb. 18 - FRONT

Explosives Hauling Permits Protested

Boston, Feb. 18 (INS)—Mayor John B. Hynes and a group of Boston legislators today joined to protest petitions which would grant permanent authority to 4300 [illegible] and trailers to carry high explosives through Massachusetts cities.

The petitions are pending before the Interstate Commerce Commission.

The mayor said the Boston traffic has reached the saturation point. He added:

"We cannot add the hazard of allowing trucks loaded with explosives to pass through the city, except for emergency defense needs."

The legislators planned to take action in the Massachusetts House and Senate to bring the [illegible]

Syracuse Herald-Journal
Feb. 18 - [illegible] 7

EXPLOSIVES HAULERS SEEK CITY PERMITS

Syracuse Bureau Herald-Journal Bureau

WASHINGTON, Feb. 18.—The Interstate Motor Freight System, with 13 trucks and 647 semitrailers; Kramer Bros. Freight Lines Inc., with 43 trucks and 166 semitrailers, and Rice & Co. Inc., with 787 semitrailers, have asked the Interstate Commerce Commission for permission to haul dangerous explosives through Buffalo streets. They have the support of the Department of Defense on the ground the national defense effort requires much greater haulage of explosives by trucks and that rail haulage is no more dangerous than by rail.

Lewis Wickes Jr., chairman of the traffic and law committee for the eastern railroads, said that four trucking firms are requesting permanent authority to carry explosives along routes which would include Nashville.

Wickes said 15 trucking firms in all are seeking this authority with only four of the number would actually operate in Nashville. They are Kramer Freight Lines, Inc., of Winston-Salem, N. C., Hughes Transportation Co., Inc., Charleston, S. C., Ringsby Truck Lines, Denver, Colo., and C. I. Whitten Transfer Co., Huntington, W. Va.

Wickes said the four companies operate a total of 1,139 trucks and 4,459 semi-trailers.

The ICC has agreed to consider the request of 15 trucking firms throughout the nation to allow them permanent authority to haul explosives, final authority at present is granted only on a temporary basis.

The move is opposed by the railroads, several cities, and a few environmental groups along with the Association of American Railroads, and the National Congress of Parents and Teachers, a group of state [illegible]

Nashville Tennessean, Feb. 16 - [illegible]

4 Firms Seeking To Haul Explosives Through City

From Washington Bureau

WASHINGTON — Four national trucking and trailer agencies will be authorized to haul explosives through the streets of Nashville if applications now pending before the Interstate Commerce Commission are granted, spokesmen for the railroads said yesterday.

Lewis Wickes Jr., chairman of the traffic and law committee for the eastern railroads, said that four trucking firms are requesting permanent authority to carry explosives along routes which would include Nashville.

Wickes said 15 trucking firms in all are seeking this authority with only four of the number would actually operate in Nashville. They are Kramer Freight Lines, Inc., of Winston-Salem, N. C., Hughes Transportation Co., Inc., Charleston, S. C., Ringsby Truck Lines, Denver, Colo., and C. I. Whitten Transfer Co., Huntington, W. Va.

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The ICC has agreed to consider the request of 15 trucking firms throughout the nation to allow them permanent authority to haul explosives, final authority at present is granted only on a temporary basis.

The move is opposed by the railroads, several cities, and a few environmental groups along with the Association of American Railroads, and the National Congress of Parents and Teachers, a group of state [illegible]

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Newark Evening News, Feb. 27 – [illegible]

Truck Munitions Issue

Congress Seeking Stricter Haulage Restrictions; Firms Ask Freer Highway Movement

Washington Bureau.

WASHINGTON—Congress has moved for stricter regulation of interstate transportation of lethal munitions at the very time truckers are asking the Interstate Commerce Commission to open streets and highways to haulage of explosives.

The Senate passed a bill (S1429) Monday that would forbid munitions being moved by truck or train unless arranged for as a defense measure by the Department of Defense or some other Federal agency. The same day, the ICC was hearing arguments why more than 3,300 trucks and trailers should be authorized to haul dangerous explosives over New Jersey highways and through the streets of Newark and other cities in and outside the state.

Thirteen different trucking concerns have applications pending for authority to carry explosives along routes which include Newark. Currently, the bulk of the business is being carried by truck.

Up to House to Act

It is up to the House now to act on Senator Ecton's (R., Mont.) bill, which was prompted by the death toll in the explosion at South Amboy in May 1960. Ecton believes that if his legislation had been in effect then "it would have absolutely prevented any such tragic occurrence as that which happened in South Amboy."

Senator Hendrickson (R., N. J.) complimented Ecton on the bill. He, too, told the Senate that "if we had had this legislation prior to that explosion, many lives would

(Continued Page 2, Column 3)

Mackinaw (Mich.) News, Feb. 17 – [illegible]

Proposal To Allow Explosives On Trucks Draws Fire At Hearing

By WILLIAM P. PYPER
(Of Our Washington Bureau)

WASHINGTON — Railroads and others Saturday came up with specific warnings to Michigan cities to show the danger involved in a proposal to permit trucks to carry explosives on the highways.

The American Trucking Association replied that the Department of Defense wanted explosives to be carried by trucks that the risk was no greater than that on the railroads, and that trucks were needed for speed.

Occasion for the outburst is a case before the Interstate Commerce Commission in which 20 trucking companies are seeking authority to carry explosives. There were some 60 original applicants, when the Defense Department said there was a need, but about half of them have dropped out.

Both sides concede that it is a matter of revenue to them—the railroads attempting to hang onto the explosive transportation business they have had to the exclusion of trucks except for the war period, and the trucking companies seeing a chance for new revenue.

• • •

BUT LEWIN WICKES SR., chairman of the Traffic and Law Committee of the Eastern railroads, has rounded up some 77 organizations, states municipalities, and businesses which believe there is grave danger involved in the proposals. Parent-teacher associations particularly object to the dangers of truckloads of explosives traveling in the neighborhood of schools.

To spell out such dangers, Mr. Wickes has compiled facts and figures on the amount of trucking which would be permitted in a large number of cities. He included four "irregular" trucking companies which have general authority to transport commodities in a large number of states, including Michigan, and added to them those specifically authorized to go through specific cities of the state.

Thus Mr. Wickes was able to show that seven firms could operate 2,900 trucks authorized to haul explosives through the streets of Saginaw.

Corresponding figures were cited for other Michigan cities. Mr. Wickes supplied the name of each company, along with the breakdown of equipment which it had available to carry explosives through each city.

"Truck haulage of explosives presents the constant hazard of catastrophic explosions which would be particularly tragic in crowded communities and on traffic bottle necks like bridges and tunnels," Wickes said.

• • •

PETER T. BEARDSLEY, attorney for the American Trucking Association, Inc., said railroads move through towns, too, sometimes parallel to highways and sometimes past hospitals and schools. He contended the extra handling required to get explosives from the source to the railhead and from the depot to the destination was more dangerous than transportation. The safety record of both the truckers and the railroads "has been pretty good," Beardsley agreed.

He pointed out the ICC would protect against promiscuous authorization to truckers and would stick to authorizations which the Defense Department proves are necessary. In any event, he said, safety precautions for both trucks and railroads would be provided by ICC, and special safety regulations may be established by the states and cities.

Newark Evening News, Feb. 2[illegible]

Explosives Loads Hit

Schoeffel Lists Dangers, Possible Damage If ICC Permits Munitions on N. J. Roads

BY ARTHUR SYLVESTER
Washington Bureau.

WASHINGTON — New Jersey, through Superintendent Charles H. Schoeffel, of the State Police and Gerhard Driscoll, has entered protests with the Interstate Commerce Commission against opening up the state's highways to hundreds of trucks and trailers carrying dangerous explosives.

The ICC is hearing arguments for and against applications by truck interests which would permit more than 2,300 trucks and trailers hauling explosives to operate persistently over routes in New Jersey. The demand to transport lethal munitions and other explosives in the state is part of a national effort by the truckers to break into the long-haul traffic now enjoyed almost exclusively by the railroads.

As an opposition witness at hearings on applications by Rice & Co. of Kansas City, Mo., to truck explosives, Schoeffel said: "The danger which might be caused to highways, bridges or tunnels would be vast in expense. The bridges, by reason of steel shortages, are now practically irreplaceable. The highway cost in New Jersey per mile is the highest in the U. S. The financial responsibility of any of the truckers to pay for damage resulting is problematical.

Cites Traffic Density

"The density of the traffic upon the highways does not warrant permission for routing through New Jersey additional vehicles carrying such dangerous loads," Schoeffel said.

Driscoll is on record through his action taken at the Governors' conference last October at Gatlinburg, Tenn. by its executive committee. Unanimously the conference accepted the committee recommendation that the ICC deny the applications before it for permanent authority by some 20 motor carriers to transport dangerous explosives.

However, the governors would consider granting temporary or accident rate explosives are added to the already congested storage at refineries.

4. Granting permanent authority for transporting explosives will multiply the hazards involved driving over rough roads, taking necessary detours and colliding with passenger cars.

5. Approval of the permits will release on the highways a number of motor carriers with little experience in carrying explosives.

Lack Enforcement Staffs

6. Enforcement staffs and state highway and safety departments are already too thin for proper enforcement of existing regulations without the added burden of thousands of motor carriers transporting explosives.

The governors' committee concedes to the motor carriers that a portion of the total explosives required by ordnance installations, mining industries and other elements important to the defense effort must go by truck. The reasons are:

1. States which lack adequate rail facilities require motor vehicles to bring in explosives.

2. Efforts to decentralize American industries, particularly those industries have placed added plants in areas not served by rail ways.

3. Motor transport is required to ship explosives from point of origin to the railroads and from railroads to point of destination.

4. In some areas, motor transport of explosives will be more economical and speedier than any other method.

Oppose Mass Permits

In attempting to regulate conflicting interests, the governors urged the ICC, when it finds motor transport of explosives justified, to grant permits on an individual basis but to refuse a mass grant of permits for permanent authority. The governors suggested the ICC after granting a carrier a temporary permit, should notify the designated state official in each of the states involved.

These state officials would determine the routes to be followed by the motor carriers through their states, the time of delivery, the precautions to be taken in handling explosives and such other regulations as may be necessary. They would also arrange where desirable for escorts to accompany motor carriers through heavily populated areas.

Operations of motor carriers transporting explosive should be carefully regulated and the regulations strictly enforced, the governors urged. They want states to adopt an adequate system covering labeling, designated routes, time of transport, literacy of drivers and other requirements.

Elizabeth Daily Journal
March 1 – Page 2

Truck Foes Warn Of Explosives

Three trucking companies are seeking Interstate Commerce Commission permission to haul explosives regularly in Route 25 through Elizabeth, [illegible] the proposal pointed out today.

Two also want the right to make regular runs in Route 29, and one in addition seeks authorization to carry munitions in Route 8-29, which includes parts of Morris and North avenues.

The potentials facing Elizabeth, if the ICC approves applications it now is considering, were cited by Lewin Wickes, Jr., of Philadelphia, representing the Eastern Railroads, a group that entered its objections at an ICC hearing in Washington last week.

Opposed by Schoeffel

New Jersey officially is among the opponents of the idea. Col. Charles H. Schoeffel, superintendent of State Police, appeared at the ICC hearing as an "opposition" witness.

Colonel Schoeffel was quoted as saying the damage "which might be caused to highways, bridges or tunnels would be vast in expense."

The State Police chief said "The highway cost in New Jersey per mile is the highest in the U. S. The financial responsibility of any of the truckers to pay for damage resulting is problematical. The [illegible] ways does not warrant permission for routing through New Jersey additional vehicles carrying such dangerous loads."

Others Join Objectors

Objections also were lodged by the American Automobile Association, the National Congress of Parents and Teachers, the Council of State Governments, the American Association of State Highway Officials, some states and cities, all major U. S. railroads, three rail brotherhoods and various safety councils, peace officers' groups and highway departments.

Summed up, their arguments are that the hauling of explosives by truck constitutes a serious menace and traffic hazard and that permanent authority is not essential because the ICC can grant temporary permission at any time.

Aligned with the truckers concerned in favoring "permanent" consent are the Defense Department and some explosives experts. They contend the National defense effort demands greatly increased carrying of munitions by truck and such haulage is no more dangerous than by rail.

Newark Evening News, Feb. 27 – [illegible]

Spurred Truckers' Bid

Court Ruling, Shift in Defense Department Policy Brought Fight for Right to Haul Explosives

BY ARTHUR SYLVESTER
Washington Bureau.

WASHINGTON — A Supreme Court decision and a change of policy by the Defense Department brought on the current effort by trucking interests to obtain the right to haul explosives over the nation's highways after it had been denied by the Interstate Commerce Commission.

The ICC is being asked to grant permanent authority to motor carriers to haul dangerous explosives in all but one of the 48 states. More than 3,300 trucks and trailers would be permitted to operate over New Jersey's highways and through the streets of Newark and other cities in the state if the ICC grants the truckers' applications.

The drive by the motor carriers to cut in on the lucrative business, of which 97 per cent heretofore has gone to the railroads, is an outgrowth of World War II. During the war, as an emergency measure, the ICC authorized motor carriers to carry explosives but only until the termination of the various war powers acts. With one exception, all truckers' temporary authority to move explosives terminated June 30, 1946, the day the war powers act expired.

Permit Extended

The exception was Rice & Co., of Kansas City, Mo., which operates a fleet of 461 truck tractors and 797 semi-trailers and covers approximately 25,000 route miles. The ICC extended its authority until the next year. Rice asked that its temporary authority be made permanent.

At hearings Rice contended the national defense effort required additional truck haulage of explosives. But no Army or Navy witness appeared to back the thesis and the ICC rejected the application. On appeal the Supreme Court ruled last April that Rice was entitled to a new hearing because the ICC examiner who heard the case was unqualified.

Meanwhile, the Defense Department revealed a change in policy. At other ICC hearings to which Rice was not a party government defense witnesses testified that a grant of permanent authority for motor carriers to haul explosives would help in emergencies where rail transportation was too slow. This change in tactic plus the Supreme Court order encouraged other truckers, anxious to cut in on the munitions hauling business, to flood the ICC with applications.

Cases Consolidated

So many were received the ICC established a cut-off date and then consolidated them into a single case which is being heard now in the wake of the record Rice hearings which were concluded January 29 before ICC Examiner B. A. Dillwell. The carriers in the consolidated case, like Rice, are asking for permanent authority to haul explosives, but unlike the Kansas City company, they don't have temporary authority. Also in some cases they have applied for new explosive carrying routes.

Involved in the current hearings are both "regular" and "irregular" carriers. "Regulars" (carriers authorized to travel only on specified routes) have requested specific authority to carry explosives on practically every mile of the primary U. S. highway system. Three such regular routes are being sought through Newark by Kramer Bros. Freight Lines, Inc., with 48 trucks and 83 semi-trailers. Two regular routes in the city are sought by Interstate Motor Freight System with 13 trucks and 687 semi-trailers and four regular routes by Rice & Co.

10 in New Jersey

The "irregulars" (carriers given blanket authority to operate anywhere within a state or group of states) have requested authority to truck explosives anywhere in every state in the union except Montana. Ten motor carriers are seeking such irregular routes in New Jersey for the purpose of hauling explosives any place in the state.

Public reaction against granting the motor carriers permanent authority has been strong and widespread. The group with the biggest economic stake is the railroads. But in addition 77 organizations, states, municipalities and businesses have had witnesses to testify against the truckers' applications.

By agreement at the time the ICC consolidated all the carriers except Rice into a single case, the testimony in opposition was to be presented during the Rice hearings and then carried over intact into the current hearings. Nine trucking companies testified against Rice including five which had themselves asked for permission to haul explosives. And just before hearings began this month 10 of the original applicants withdrew with the attorney for eight of them informing the commission:

"The matter has been paraded up and down the entire country, in the press, before Governors' conferences, before many state and the national legislature and before public-spirited groups and associations * * * in view of the entire situation, including the prospect of a further and much more voluminous record and the entailing of a great deal more time and considerable additional expense, it is the desire of each of these applicants that their applications be dismissed."

Muskegon (Mich.) Citizen-Patriot, Feb. 17 –

Explosives Trucks Seek City Route OK

More trucks would haul explosives through Jackson than any other Michigan city, if the government permits trucks to carry such freight on highways, the Citizen Patriot Washington bureau revealed Saturday.

Eight trucking firms operating 2,400 trucks, the bureau reports, seek government permission to transport explosives through the city.

Railroads and other opponents Saturday came up with specific warnings to Michigan cities to show the danger involved in a proposal to permit trucks to carry explosives on the highways.

The American Trucking Association, Inc., replied that the Department of Defense wants explosives carried by trucks, that the risk is no greater than that on the railroads and that trucks are needed for speed.

Occasion for the outburst is a case before the Interstate Commerce commission in which 20 trucking companies are seeking authority to carry explosives. There were some 60 original applicants, when the Defense department said there was a need, but about half of them have dropped out.

REVENUE FACTOR FOR BOTH

Both sides concede that it is a matter of revenue to them, the railroads attempting to hang onto the explosive transportation business they have had to the exclusion of trucks except for the war period, and the trucking companies seeing a chance for new revenue.

But Lewin Wickes, Jr., chairman of the traffic and law committee of the eastern railroads, has rounded up some 77 organizations, states, municipalities and businesses which believe there is a grave danger involved in the proposal. Parent-Teacher associations particularly object to the dangers of truckloads of explosives traveling in the neighborhood of schools.

To spell out such dangers, Mr. Wickes has compiled facts and figures on the amount of trucking which would be permitted in a large number of cities. He included "irregular" trucking companies which have general authority to transport commodities in a large number of states, including Michigan, and added to them those specifically authorized to go through specific cities of the state.

MICHIGAN CITIES.

Thus Mr. Wickes was able to show that eight firms could operate 2,400 trucks authorized to haul explosives through the streets of Jackson.

Corresponding figures for other Michigan cities include Flint, seven firms operating 3,300 trucks; Bay City, six firms operating 3,000 trucks; Grand Rapids, six firms operating 3,000 trucks; Saginaw seven firms operating 2,900 trucks; Muskegon, six firms operating 3,000 trucks, and Kalamazoo, seven firms operating 3,100 trucks. Mr. Wickes supplied the name of each company, along with the breakdown of equipment which it had available to carry explosives through each city.

"Truck haulage of explosives presents the constant hazard of catastrophic explosions which would be particularly tragic in crowded communities and on traffic bottlenecks like bridges and tunnels," Wickes said.

BEARDSLEY'S VIEWS.

Peter T. Beardsley, attorney for the American Trucking Association, Inc. said railroads move through the towns, too, sometimes parallel to highways and sometimes past hospitals and schools. He contended the extra handling required to get explosives from the source to the railhead and from the depot to the destination is more dangerous than transportation. The safety record of both the truckers and the railroads "has been pretty good," Beardsley agreed.

He pointed out the ICC will protect against promiscuous authorization to truckers and stick to authorizations which the Defense department proves are necessary

BEST COPY AVAILABLE

3350
PL 113

Plaintiff's Exhibit 114

The Baltimore and Ohio Railroad Company Law Department
Baltimore 1, Md.

July 21, 1952

MC-200 Sub. 84 Riss & Company, Inc. (Consolidated)

Mr. Lewin W. Wickes, Jr.
Assistant General Solicitor
The Pennsylvania Railroad Company
Philadelphia, Pennsylvania

Dear Lew:

I received your letter of July 18, 1952 to which was attached a copy of the press release of the Ohio Public Utilities Commission dated July 15, 1952. Ohio's action is most encouraging and should influence the Commission to deny Riss' Petition for Reconsideration and to Vacate the Cease and Desist Order.

I wish to compliment you and the others who have so effectively labored in this motor carrier explosive field. Your labors are beginning to bear fruit, and I hope the crop is a large and rich one. My congratulations!

Very truly yours,

/s/ Jim

Assistant General Counsel

LJM:MM

Plaintiff's Exhibit 115

The Pennsylvania Railroad Company
Legal Department

August 20, 1952

John J. Fitzpatrick, Esq., Chairman
Eastern Territory Railroads
1 Park Avenue
New York, N. Y.

Dear Mr. Fitzpatrick:

I am sending you a copy of our brief in the Riss and other truck explosives cases, which has just been filed. I am also enclosing a copy of a letter which I sent to our operating witnesses and their attorneys who worked on this case. As pointed out in the letter, the Kansas City proceedings, in which Riss is appealing from the cease and desist order we have obtained from the Interstate Commerce Commission, have brought to light the best figures we have at present indicating the losses we are suffering from the diversion of this traffic. It appears that merely as to Riss alone, and merely on the part of the Riss' temporary authority to which the cease and desist order applies, we are losing something over $100,000. a week in traffic.

Also, I think the somewhat unusual line of argument adopted in Part Two of the brief (as mentioned in the enclosed letter) will interest you from a legal point of view.

Because of the importance of this traffic and the unusual force of our general argument based on the National Transportation Policy it may be that some of your officers would be interested in seeing copies of Volume I of this brief. I have copies available.

I want to say that Mr. Masterson contributed heavily to Sec. IX and had practically the sole responsibility for Part Three. These are technical sections of great importance and may be crucial when the chips are down, in spite of all the noise and confusion in other respects. As I

functions as chairman of the briefing committee, I can say that we were very happy indeed with Mr. Masterson's handling of these matters.

Very truly yours,

/s/ Lewin W. Wickes, Jr.

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-encl.

Plaintiff's Exhibit 116

THE PENNSYLVANIA RAILROAD COMPANY
LEGAL DEPARTMENT
1740 Broad Street Station Building
Philadelphia 4, Pa.

September 2, 1952

J. H. Hays, Esq., Counsel
Association of Western Railroads
280 Union Station
Chicago, Ill.

Dear Joe:

I have delayed answering your letter of August 25 about a possible meeting hoping my own plans would crystallize. I would like like the dickens to get the week of the 14th for a vacation, but at the same time there is a possibility a hearing in which I will be involved will start in Washington on that date.

I expect to be on the job the week of September 8. As I understand your schedule you are tied up through the 11th, I wonder whether September 12 would work out for us and suggest we get in touch early in the week of the 8th to try to fix on that date. I think we ought to consider where to meet at the same time.

Yours very truly,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-
cc - F. X. Masterson, Esq.
BPS to F.X.M.

This concerns a proposed get together according to copy of Joe's letter enclosed concerning an answer to the Defense Department statement on Explosives which it put in the hands of a Western Congressman.

L. W. W.

Copy

Plaintiff's Exhibit 116 A

THE ASSOCIATION OF WESTERN RAILWAYS
Law Department

Chicago 6, Illinois
August 25, 1952

Mr. L. W. Wickes, Jr.
Assistant General Solicitor
The Pennsylvania Railroad Company
1740 Broad Street Station Building
Philadelphia 4, Pa.

Dear Lew:

In your letter of August 20th concerning policy as to explosives you suggest a conference as soon in September as possible. I have a busy fall season on the way and hope we can work out a session. I am probably tied up prior to September 11th and must be here for a meeting of a special committee of the Law Committee on that date. Since our policy involves a mixed question of law and public relations, would there be any chance to get the advice of your new Director of Public Relations. I would bring Paul Shoemaker from our west end, along with Jim or Amos (if he is back by then) and I would like that Thor Miller should be along.

Would you like to meet in Chicago or would you rather have us come east? What about one of the days during the week of September 15th?

Very truly yours

/s/ Joseph H. Hays,
Counsel

Plaintiff's Exhibit 116 B

J. H. Hays, Esq., Counsel
Association of Western Railroads
280 Union Station
Chicago, Ill.

August 20, 1952

12972

Dear Joe:

Your letter of August 14 about tentative statement on the transportation of dangerous explosives raises many questions in a field in which I am certainly no expert. I should think the reply to the Defense Department's statement would be much better coming from the A. A. A., and it may be that it would be willing to hear suggestions if we can set up a definite procedure.

As to procedure, I should think the Congressional Record approach would be best if that idea appeals to Mr. Mahon. It has the disadvantage that January is a long way off if no special session intervenes.

As to Federal legislation, I have thought that we might shoot for a truck law limiting the weight of explosives to 5,000 or 10,000 pounds, and particularly limiting the distance. However, there is this to remember: if Congress undertakes legislation on all trucking of explosives on some theory or other, it may occupy the field. At present, the Interstate Commerce Commission has just canceled all its regulations on the intrastate trucking of explosives. Therefore, there is a current need for state re-evaluation on intrastate trucking. It may be that we could accomplish more through the individual states, because it would be unlikely that they would probably not be consistent with each other.

In any case, I entirely agree we should have an early meeting--as soon in September as possible to avoid conflicts with vacations. I would suggest a relatively small first meeting of those of us who are most familiar with the subject primarily for the purpose of establishing a long-range coordinated program.

Very truly yours,

/s/ Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-
cc - Thormund A. Miller, Esq.

Plaintiff's Exhibit 117

December 4, 1952

Mr. James Devine
c/o Carl Byoir & Associates
10 E. 40th Street
New York, N. Y.

Delmar W. Beman, Jr., Esq.
Carl Byoir & Associates
829 National Press Building
Washington, D. C.

Dear Jim and Del:

I am enclosing copy of Defense Department's statement about which I talked to Jim. I understood that Jim will be talking to Del about it, and surely wanted the paper to be in the hands of both of you.

Yours truly,

Lewin W. Wickes, Jr.
Assistant General Solicitor

* * *

LWW-EB-encl.

Plaintiff's Exhibit 118

THE PENNSYLVANIA RAILROAD COMPANY
* * *
Philadelphia 4, Pennsylvania

April 16, 1953

J. H. Hays, Esq., Counsel
Association of Western Railroads
280 Union Station
Chicago, Ill.

Dear Joe:

I have your note of April 14 sending along "newspaper clippings illustrating hazards of trucking explosives." This is really a very effective presentation. I assume that it has been gotten pretty much into shape before the recent explosions at Lewis.

Would you be good enough to send me on several more copies for use in talking with state people about the pending Baggett Case?

Yours truly,

/s/ Lew

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-

Plaintiff's Exhibit 119
Page One

From: Lewin W. Wickes, Jr., Chairman
Traffic and Law Committee
Eastern Railroads
722 Bond Building
1404 New York Avenue, N. W.
Washington 5, D. C.

FOR IMMEDIATE RELEASE

WASHINGTON, June 4 – Riss and Company, of Kansas City, the nation's third largest trucker in 1952, was accused today of using the Federal Dourts to hold on to unauthorized but highly profitable operations in trucking explosives.

The charge was levelled by railroad attorneys in briefs filed with the U. S. District Court for Western Missouri. Another brief, filed by the Interstate Commerce Commission, questioned the trucker's sincerity. The railroads are intervenors in the case of Riss vs. the United States of America and the Interstate Commerce Commission.

A year ago the ICC said Riss was hauling explosives over routes for which no authority ever was granted, and ordered a stop to the practice. Riss appealed to the Federal court, stating compliance with the ICC order would eliminate $5,000,000 a year in explosives frieght revenue.

The court dismissed Riss' appeal a month ago. The trucker immediately filed a motion for a new trial on the appeal question.

In their reply brief, attorneys for the Class I railroads of the Eastern and Western territories allege: "It is . . . obvious plaintiff intends to continue. . . operations beyond the scope of its authority . . . just as long as it can prolong this litigation. . . The plaintiff's effort to obtain a new trial is obviously merely a delaying tactic designed to prolong to the extent possible the continuance of its unjust profit at the rate of $100,000 a week."

The Interstate Commerce Commission, in its own reply brief, contends that "if the plaintiff sincerely believes" the Federal court was in error,

its proper remedy lies in appeal to a higher court rather than a plea for a retrial. Riss' arguments in support of the motion for a new trial are mere repetitions of the contentions advanced in the trial itself, ICC attorneys state.

Objectors also contended that existing rail service is adequate to carry the explosives traffic involved in the truckers' applications, and therefore that the additional service offered by the truck firms is neither necessary nor in the public interest. Interstate Commerce Commission records were produced to prove that no fatal accidents in rail transportation of explosives had occurred since 1923.

Forty of the truckers withdrew their applications during the hearings. Of the remaining 20, the examiner recommended that 19 be refused explosives-hauling rights.

He recommended that one carrier (Riss and Company, of Kansas City, the nation's third largest truck firm) be granted authority to haul explosives over the highway of 10 states. That trucker had applied for permission to operate over routes in 35 states.

It is this recommendation concerning Riss, together with a number of supplemental conclusions, to which the railroads' exceptions are directed.

Previously, objections to the examiner's report had been forwarded to the ICC by Massachusetts, Rhode Island, Connecticut and West Virginia, and by Cleveland, St. Louis, Peoria, Pittsburgh, Buffalo and New York City.

Plaintiff's Exhibit 120
Page One

Lewin W. Wickes, Jr.,
Chairman, Traffic and Law Committee
Eastern Railroads
1 Park Avenue
New York 16, New York

FOR RELEASE: Thursday, July 23, 1953

CIVIC OPPOSITION TO EXPLOSIVES TRUCKING JOINED BY RAILROADS

NEW YORK, July 23 -- A proposal to increase highway transportation of dangerous explosives, already under fire from four states and six large cities, drew objections today from the nation's railroads.

The railroads of the Eastern, Southern and Western regions filed a statement of exception with the Interstate Commerce Commission to the findings of an ICC examiner who two months ago recommended that one out of 60 original trucker applicants be granted authority to carry explosives.

The case, known to the transportation world as the "Riss and Consolidated" case, began two years ago when long-haul trucking firms applied to the ICC for permanent rights to carry explosives over the highways of 47 states.

Like the states and cities, the railroad objectors called trucking of explosives unsafe and against the public interest. They took their position, they said, both as competitive carriers and as large-scale taxpapers.

The railroad document asserted that a review of the evidence in the case shows that as a matter of law the examiner, B. E. Stillwell, was "obliged" to rule that trucking of explosives "has not been satisfactory and that this form of transportation is relatively more hazardous than rail."

At public hearings before the examiner, more than 80 governmental and public-interest organizations objected to the truckers' requests for

additional explosives-hauling authority. The objections were based chiefly on the element of danger involved in trucking explosives.

Objectors also contended that existing rail service is adequate to carry the explosives traffic involved in the truckers' applications, and therefore that the additional service offered by the truck firms is neither necessary nor in the public interest. Interstate Commerce Commission records were produced to prove that no fatal accidents in rail transportation of explosives had occurred since 1923.

Forty of the truckers withdrew their applications during the hearings. Of the remaining 20, the examiner recommended that 19 be refused explosives-hauling rights.

He recommended that one carrier (Riss and Company, of Kansas City, the nation's third largest truck firm) be granted authority to haul explosives over the highways of 10 states. That trucker had applied for permission to operate over routes in 35 states.

It is this recommendation concerning Riss, together with a number of supplemental conclusions, to which the railroads' exceptions are directed.

Previously, objections to the examiner's report had been forwarded to the ICC by Massachusetts, Rhode Island, Connecticut and West Virginia, and by Cleveland, St. Louis, Peoria, Pittsburgh, Buffalo and New York City.

Plaintiff's Exhibit 121

Mr. James Devine
c/o Carl Byoir & Associated
10 E. 40th Street
New York, N. Y.

September 8, 1953

Dear Jim:

I enclose copy of communication from Joe Hays given wide circulation among the railroads.

Can you tell me the actual broadcast distribution this received?

Very truly yours,

/s/ Illegible

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-encl.

Plaintiff's Exhibit 122
Page One

THE ASSOCIATION OF WESTERN RAILWAYS
LAW DEPARTMENT
260 UNION STATION BUILDING
517 WEST ADAMS STREET
CHICAGO 6, ILLINOIS

* * *

August 31, 1953

TO: MEMBERS OF DEFENSE COMMITTEE IN EXPLOSIVES CASES:

Gentlemen:

You will be interested in an excerpt from a broadcast "Parade of Business" presented during the week of August 17, 1953. It is as follows:

PROGRAM:	Parade of Business
TIME:	13 Minutes
USE:	Week of August 17, 1953
ANNCR:	The Parade of Business
MUSIC:	THEME. A GOOD MARCH. HOLD FOR 10 SECS. THEN FADE UNDER

ANNCR: From every corner of the nation . . . from Portsmouth, New Hampshire, to San Diego, California . . . from Portland, Oregon, to Tampa, Florida . . . come the reports you'll hear on our weekly Parade of Business . . . (calls) invites you to join us for the next quarter hour as we follow the latest developments in business, finance, and agriculture. From factory and farm, from Fifth Avenue and the store around the corner, here are stories about a nation hard at work.

* * * * *

Many a motorist has been shocked into taking a little extra care on the highways by some big letters painted on the back of a truck. The letters said: Danger - Explosives. Highway transportation of explosives is a problem -- one that truck operators, highway officials and local government authorities have been working on for years. No matter how many

precautions are taken, accidents do occur. And when they do, people get killed or hurt and a lot of damage results. Cities are especially concerned with the problem because the potential threat of explosions to city life and property is so much greater. One city official recently suggested that trucks carrying explosives be required to engage escorts of a fire engine and a police car on trips through his home town of Omaha. The official was Fire Commissioner William D. Noyes. His idea is that the police car will clear the way through crowded city traffic for trucks carrying explosives. And the fire engine would be on hand to fight explosion and fire if they occur. Noyes said the escort service would cost truck operators $150 per trip. Omaha, of course, isn't the only city that's concerned with the problem. As a matter of fact, more than 80 governments and safety groups last year opposed the efforts of 60 trucking firms to get permission to haul explosives across state lines. Most of them felt truck traffic in explosives was too dangerous to be permitted under any circumstances. And this year ten state legislatures considered bills limiting the amount of explosives that could be moved via highway. The theory behind that thinking seems to be that 20 tons of dynamite is a lot more dangerous than five tons. All these efforts, of course, add up to safer highways for us passenger drivers. And fewer shocks when we pull up behind these ominous words on truck tailgates: Danger - Explosives.

Very truly yours,

/s/ Joseph H. Hays

Counsel

INTER-OFFICE COMMUNICATION
CARL BYOIR & ASSOCIATES, INC.

Plaintiff's Exhibit 123
Page one

To: Lew
From: Jim D.

Date: 8-18-53
Subject: Release

12972 - Publicity

This to 300 radio stations

PROGRAM: Parade of Business

Script No. 765

TIME: 13 Minutes

USE: Week of August 17, 1953

ANNCR: The Parade of Business

MUSIC: THEME. A GOOD MARCH. HOLD FOR 10 SECS., THEN FADE UNDER

ANNCR: From every corner of the nation...from Portsmouth, New Hampshire, to San Diego, California...from Portland, Oregon, to Tampa, Florida...come the reports you'll hear on our weekly Parade of Business...(calls) invites you to join us for the next quarter hour as we follow the latest developments in business, finance, and agriculture. From factory and farm, from Fifth Avenue and the store around the corner, here are stories about a nation hard at work.

MUSIC: THEME UP BRIEFLY THEN OUT

ANNCR: All of us know money is pretty hard to hold on to. But where does it go? The Department of Commerce each year issues a report showing exactly what happens to the public's cost-of-living dollar. The new report is just out - and it should help families to do a better job in spending their money intelligently. In other words, you should be able to get some idea as to how you stand compared with the average for all of us. Before we get down to cases, all of us spent more in 1952 than in 1951 -- about 11 billions more. Total cost-of-living expenditures last year were a record 218 billions. Now where did it go? Biggest item of all was for food. Food took almost 30 per cent of the household dollar in 1952. That's the same as in 1951. Household operations -- that includes your electric and gas bills, spending for appliances, furniture, rugs and anything that's used in your home -- took the second biggest bite. Those things accounted for almost 13 per cent, which was a little less than in the previous year. The third largest sum went for clothing. We spent

a little less on that, proportionately, than in 1951. Money paid out for housing took a big jump, largely because of rent increases. The housing expenditure was the fourth largest and amounted to about 11 cents on every dollar, up one per cent over 1951. The fifth major item in the public's household budget was transportation. This may be surprising -- but we spent more than 22 billions -- more than 10 per cent of every dollar -- on getting to and from places. Even so, the figure was less than in 1951, reflecting the decline in spending for new and used cars. About five cents out of every dollar was spent for recreation, and a similar amount for personal business. Personal business covers bank charges, interest on personal loans and things like that. Medical expenditures rose slightly, totaling about five per cent. And we also spent more for private education, welfare, religion and foreign travel. Now you can sit down and figure out how you stand. You may be able to shift a few things here and there to make your budget more comfortable. But I warn you: no amount of arithmetic is going to change the amount in the pay envelope.

Ever given any thought to raising guppies? Before you laugh, you might take into account the fact that tropical fish raising is big business. Second, that a Yale pathologist says guppy raising -- that's a tiny fish, in case you didn't know -- not only is one of the least expensive of hobbies, but also a liberal education. He's written a new book about it called Immodest Midget Fish. Dr. Leon Whitney claims that the guppy is even superior to the birds and bees when it comes to teaching youngsters the facts of life. This breed of tropical fish lives from two to two and half years. Dr. Whitney says adults as well as children can learn a lot by watching the fish through their life span. He says the glass tank or bowl where the guppies live is a submarine delivery room where practically every life action can be seen. The mother guppy produces a new litter

about every 30 days. Dr. Whitney says he has bred more strains of guppies than most people know even exist. And he points out that tanks of the fish are becoming standard fixtures in the waiting rooms of doctors, dentists and psychiatrists. Which means the market for guppies is good. Even many hospitals are finding out about the soothing effect guppy-watching has on people with overwrought nerves. So you see, raising guppies isn't only an interesting and profitable hobby. It may be just what the doctor ordered.

The argument about whether the United States ever will run out of oil is still going strong. Recently, though, there was a development which gave some fresh ammunition to those who say we never will run out of petroleum. One of the big oil companies announced promising tests of a method for tapping a vast new source of oil. Geologists and oil people have known for years that this oil was there -- in Texas and Alabama -- but there wasn't any way it could be brought out of the ground. There are four billion barrels of it, too. The catch -- up until this recent development -- was that the oil is heavy crude -- so heavy that it couldn't be recovered. The oil company discovered how it could be done. Simple, too. The new method calls for underground fires which burn up about 15 per cent of this heavy crude, but heat the whole mass so it gets "runnier." Then air is injected into the area to drive the thinner petroleum through underground rock formations into nearby producing wells. So next time someone tries to scare you about an oil shortage -- well, just be calm. And tell them how fire, the old enemy of the oil men, is now helping them to increase production.

Many a motorist has been shocked into taking a little extra care on the highways by some big letters painted on the back of a truck. The letters said: Danger - Explosives. Highway transportation of explosives is a problem -- one that truck operators, highway officials and local

government authorities have been working on for years. No matter how many precautions are taken, accidents do occur. And when they do, people get killed or hurt and a lot of damage results. Cities are especially concerned with the problem because the potential threat of explosions to city life and property is so much greater. One city official recently suggested that trucks carrying explosives be required to engage escorts of a fire engine and a police cars on trips through his home town of Omaha. The official was Fire Commissioner William D. Noyes. His idea is that the police cars will clear the way through crowded city traffic for trucks carrying explosives. And the fire engine would be on hand to fight explosion and fire if they occur. Noyes said the escort service would cost truck operators $150 per trip. Omaha, of course, isn't the only city that's concerned with the problem. As a matter of fact, more than 80 governments and safety groups last year opposed the efforts of 60 trucking firms to get permission to haul explosives across state lines. Most of them felt truck traffic in explosives was too dangerous to be permitted under any circumstances. And this year ten state legislatures considered bills limiting the amount of explosives that could be moved via highway. The theory behind that thinking seems to be that 20 tons of dynamite is a lot more dangerous than five tons. All these efforts, of course, add up to safer highways for us passenger drivers. And fewer shocks when we pull up behind those ominous words on truck tailgates: Danger - Explosives.

And now for those big business stories that come in small packages, the Business Briefs: More and more frozen juices continue to go down American throats. Per capita consumption of frozen fruit juices is expected to set new records again this year. A federal official says 1953 purchases of frozen orange juice, for instance, may be up by five million

gallons...And while we're sipping our favorite beverages -- the cost of wine is on its way up. Reason: the recent vineyard freeze which cut the California grape crop 15 per cent... Over in Japan a company has come up with a plan to save money. No--it's not a bank. This company proposes to make plastic money. It hopes to sell the idea to Southeast Asia. It seems that in these countries the high humidity rots paper and cloth...A barber in Michigan has come up with something that should make Junior a little happier. This smart barber has two squirt guns. One holds water. He uses that one to wet down the kids' hair. And the other holds tonic, to make the kids smell nice. Needless to say, the children love it...Here'e one for the believe it or not department. In Iowa there's supposed to be a hen that regularly lays two-toned eggs. One half of the shell is brown and the other half is white. Nothing like pleasing everybody, is there?

BREAK FOR ANNOUNCEMENT AND/OR COMMERCIAL

Here's more about the new plan being formed by the government to control the three basic metals -- steel, copper and aluminum -- in case of a future defense emergency. The first thing we learned about the plan was its speed and simplicity. We were told the plan could be set rolling within 30 days after a war started, and it could save the big manufacturers countless hours and dollars in paper work and red tape. But now we learn the plan will give relief to small manufacturers just as much as big ones. The new blueprint does away with the dying Controlled Materials Plan, which allocated the exact quantities of metal going to all producers, large and small. Instead, metal now will be allocated only for military supplies and for civilian products like autos and refrigerators. Any metal that remains will be left in the free market for use by producers of bearings and bolts and other small parts that go into the larger end products. The government won't try to regulate the amount of steel and copper and aluminum going to every individual maker of small parts. Even though this new controls plan is much easier than the tight regulations we had in force at the start of the Korean war, the government doesn't

expect to use the material controls at all unless a new emergency comes up. If they do go into effect in the future, it should be a lot easier on the parts manufacturers who spent the early days of the Korean war waiting for steel and aluminum -- and knocking on wood.

The business that gives you that well-tailored look isn't very well suited itself these days. The reason is a labor shortage in the custom tailoring field. In fact, latest reports say there's a serious shortage of skilled tailors in every major city in the country. This shortage has already brought about the closing of many custom tailoring shops. And it's forcing manufacturers to increase their use of machines and semi-skilled workers to take some of the load off their ever-dwindling supply of skilled tailors. There are two reasons for this labor shortage. First, very few Americans show any interest in the custom tailoring craft because it takes from five to eight years of training to become a really good tailor. And second, up until now, the restrictions of the McCarran Act have made it practically impossible for the clothing industry to use good tailors coming into this country from Europe. The clothing men are hoping for at least some relief from the new immigration program approved by Congress. However, it's estimated that the industry could use a minimum of ten thousand tailors. And it's doubtful that enough skilled tailors will be included among the refugees to have any real effect on the situation. Here's a case where the problem is not finding a needle in the haystack but rather the man to use it.

Around the nation's capital these days it isn't the Greeks who have a word for it. It's a dynamic businesswoman by the name of Lydia Kenny. Back in 1951 Lydia Kenny was working for the War Department in Washington. She saw that there was a definite need for some kind of translating service to handle the increasing amount of technical and social information coming into the capital from all over the world. So Lydia Kenny resigned her job

and went into the translating business. And if she needed any reassurance that this was the right decision, she got it right off the bat. Before she had a chance to set up her office she had enough business to last a month. Since those early days Lydia's language service has become a sizable word factory. Her staff includes twelve linguists, seven editors, ten administrators, and many part-time specialists. They have handled successfully more than 30 languages. The government is just one of Lydia's customers. Today she has orders from foreign legations, export-import companies, patent law firms, and industrial organizations. All of these clients are more than happy to let Lydia exercise her female prerogative and have the last word. And that word, insofar as Lydia and her translation service are concerned, is "profitable."

In the Things To Come Department this week your Parade of Business introduces a gadget for the lazy golfer. It's a practice machine that lets him tee up and belt out ball after ball without once bending over. The gadget consists of a wire hopper that stores up 15 balls. The balls feed into a little tube-like enclosure, fitted with a special lever. The golfer merely presses the lever with the head of the club. Each time he presses, a ball rolls through the tube and onto a rubber tee. No excuse now for a man to complain of a hard day on the golf course... A toy manufacturer has come out with a new method for inserting eyes in stuffed animals. The eyes of dolls, teddy bears and other nursery creatures are fastened internally. It's impossible for them to be pulled out and swallowed by even the most ambitious youngster... A real humanitarian invented this: a device enabling a dental patient to signal "Ouch" -- even though his jaws are propped open and his mouth is filled with cotton and machinery. With one push of a switch, he is able to caution the dentist to shut off the drill... Ever have difficulty eating a grapefruit? An ingenious fellow has come up with a spoon especially

designed for separating the fruit sections. It has sharp prongs at the tip and saw teeth along the bowl of the spoon. No more squirts in the eye!... Another manufacturer with an eye on the parent trade has devised an educational shoelace designed to teach little folks how to tie a double bow. The lace has pictures of a blanket on it and the front and rear halves of a horse. When the lace is tied properly, the ends of the horse come together with the blanket draped over the horse's back. That one, it seems to me, has a lot of possibilities for adults, too.

And so they go, new ideas, new trends, new methods. And so goes the Parade of Business. Plan to be with us again at the same time next week for more behind-the-scenes developments in the world of finance, agriculture and industry _____ speaking.

This script from:

Carl Byoir & Associates, Inc.

10 East 40 Street

New York 16, New York

Plaintiff's Exhibit 123
Page Nine

RADIO STATIONS SERVICING PARADE OF BUSINESS SCRIPT

ALABAMA

WAUD, Auburn
WBRC, Birmingham
WMSL, Decatur
WFOL, Florence
WBHP, Huntsville
WJJJ, Montgomery
WTBF, Troy
WJRD, Tuscaloosa
WUOA, University

ALASKA

KFQD, Anchorage
KINY, Juneau
KTKN, Ketchikan
KIBH, Seward
KIFW, Sitka

ARIZONA

KCKY, Coolidge
KWJB, Globe
KPHO, Phoenix
KYMA, Yuma
KGLU, Safford

ARKANSAS

KVRC, Arkadelphia
KXAR, Hope
KOTN, Pine Bluff

CANADA

CJVJ, Victoria, B. C.

CALIFORNIA

KWTC, Barstow
KBOC, Corona
KIEM, Eureka
KTSL, Chico
KFRE, Fresno

CALIFORNIA

KYOS, Merced
FTRB, Modesto
KDON, Monterey
KSFE, Needles
KTIP, Porterville
KVCV, Redding
KXOA, Sacramento
KEXM, San Bernardino
KEEN, San Jose
KSJV, Sanger
KCOY, Santa Maria
KGDM, Stockton
KSUE, Susanville

COLORADO

KGOL, Fort Collins
KOKO, La Junta
KUBC, Montrose
KGEK, Sterling

FLORIDA

WIRK, West Palm Beach
WTAN, Clearwater
WRUF, Gainesville
WKWF, Key West
WDSR, Lake City
WTYS, Marianna
WMMB, Melbourne
WGBS, Miami
WLOF, Orlando
WTRR, Sanford
WPDQ, Jacksonville

GEORGIA

WDEC, Americus
WQXI, Atlanta
WLBB, Carrollton
WMLT, Dublin
WRGA, Rome

GEORGIA

WWNS, Statesboro
WWGS, Tifton

HAWAII

KHBC, Hilo
KPOA, Honolulu

DELAWARE

WDOV, Dover
WAMS, Wilmington

IDAHO

KCID, Caldwell
KRLC, Lewiston
KFXD, Nampa
KWEI, Weiser

ILLINOIS

WOKZ, Alton
WJBC, Bloomington
WDZ, Decatur
WLBK, DeKalb
WCRA, Effingham
WNMP, Evanston
WMBQ, Harrisburg
WVMC, Mt. Carmel
WVLN, Olney

INDIANA

WAOV, Vincennes
WKJG, Fort Wayne
WBAA, Lafayette
WMRI, Marion
WTCJ, Tell City

IOWA

KBUR, Burlington
KSWI, Council Bluff

IOWA

KSIB, Creston
KWLC, Decorah
KWIM, Des Moines
KDTH, Dubuque
KXGI, Fort Madison
KOKX, Keakuk
KWPC, Muscatine
KMA, Shennandoah

KANSAS

KIUL, Garden City

KENTUCKY

WLBJ, Bowling Green
WZIP, Covington
WHIR, Danville
WMTC, Vancleve

LOUISIANA

KALB, Alexandria
KANE, New Iberia

MAINE

WHOR, Portland
WTVL, Waterville

MARYLAND

WFBR, Baltimore
WJEJ, Hagerstown
WBOC, Salisbury

MASSACHUSETTS

WVOM, Brookline
WMAS, Springfield
WAAB, Worcester

MICHIGAN

WABJ, Adrian
WHRV, Ann Arbor

MICHIGAN

WHFB, Benton Harbor
WFDF, Flint
WHDF, Calumet
WJPD, Ishpeming
WKLA, Ludington
WSGW, Saginaw
WSOO, Saulte Ste. Marie

MINNESOTA

KROX, Crookston
WREX, Duluth
WCAL, Northfield

MISSISSIPPI

WJPR, Greenville
WNAG, Grenada
WFOR, Hattiesburg
WTOK, Meridian
WAZF, Yazoo City

MISSOURI

KWOS, Jefferson City
KWOC, Poplar Bluff
KTTR, Rolla
KSGM, Ste. Genevieve
KFUO, St. Louis
KSIM, Sikeston, Mo.
KTTS, Springfield

MONTANA

KGHL, Billings
KXIF, Butte
KGVO, Missoula
KJYI, Shelby

NEVADA

KELK, Elko
KRAM, Las Vegas
KOLO, Reno

NEW JERSEY

WSNJ, Bridgeton
WCAM, Camden
WPAT, Paterson

NEW MEXICO

KVER, Albuq erque
KLAH, Carlsbad
KICA, Clovis
KGAK, Gallup
KSIL, Silver City

NEW YORK

WOKO, Albany
WBTA, Batavia
WKRT, Cortland
WENE, Endicott
WGLN, Glens Falls
WHCU, Ithaca
WJOC, Jamestown
WABC, New York
WDOS, Oneonta
WRNY, Rochester
WEVR, Troy

NORTH CAROLINA

WABL, Albermarle
WBBB, Burlington
WCKB, Dunn
WCNC, Elizabeth
WHKY, Hickory
WBUY, Lexington
WMBL, Morehead City
WTNC, Thomasville

NORTH DAKOTA

KFJM, Grand Forks
KSJB, Jamestown

OHIO

WGAR, Cleveland

OHIO

WVKO, Columbus
WTNS, Coshocton
WHIO, Dayton
WKBV, Eaton
WHOK, Lancaster
WLOK, Lima
WPFB, Middletown
WMVO, Mount Vernon
WCLT, Newark
WPTW, Piqua
WZEL, Springfield
WWST, Wooster

OKLAHOMA

KWHK, Atlas
KWCO, Chickasha
KRHD, Duncan
KASA, Elk City
KSWO, Lawton
KTMC, McAlester
KHBG, Okmulgee
WBBZ, Ponca City
KGFF, Shawnee
KVOO, Tulsa

OREGON

KBND, Bend
KWRO, Coquille
KRUL, Corvallis
KASH, Eugene
KUIN, Grants Pass
KGON, Oregon City
KSLM, Salem

PENNSYLVANIA

WAEB, Allentown
WAVL, Apollo
WLTR, Bloomsburg
WESA, Charleroi
WHJB, Greensburg
WSAJ, Grove City
WHP, Harrisburg

PENNSYLVANIA

WHUN, Huntington
WCRO, Johnstown
WLAN, Lancaster
WHWL, Nanticoke
WDAS, Philadelphia
WCAE, Pittsburgh
WBAX, Wilkes-Barre

RHODE ISLAND

WFCI, Providence

SOUTH CAROLINA

WUSN, Charleston
WCOS, Columbia
WLAT, Conway
WHSC, Hartsville
WALD, Walterboro

SOUTH DAKOTA

KOTA, Rapid City
KIHO, Sioux Falls

TENNESSEE

WBAC, Cleveland
WJJM, Lewisburg
WJIG, Tullahoma
WCDT, Winchester

TEXAS

KFYN, Bonham
KXIT, Dalhart
WFAA, Dallas
KDLK, Del Rio
KURV, Edinburg
KTHT, Houston
KOCA, Kilgore
KIUN, Pecos
KOLE, Port Arthur
KTSA, San Antonio
KRRV, Sherman
KSTV, Stephenville

TEXAS

KTLW, Texas City
KVIC, Victoria
KWFT, Wichita Falls

UTAH

KBUH, Brigham City
KSUB, Cedar City
KVNU, Logan
KOVO, Provo
KSL, Salt Lake City

VERMONT

WJOY, Burlington
WSKI, Montpelier
WSYB, Rutland

VIRGINIA

WWOD, Lynchburg
WRNL, Richmond

WEST VIRGINIA

WCOM, Parkersburg
WKNA, Charleston
WVVW, Fairmont
WAJR, Morgantown
WBKW, Welch
WKWK, Wheeling

WASHINGTON

KXRO, Aberdeen
KVOS, Bellingham
KELA, Centralia
KSEM, Moses Lake
KGY, Olympia
KOMW, Omak
KXRN, Renton
KWWB, Walla Walla

WISCONSIN

WOMT, Manitowoc
WIGM, Medford

WYOMING

WKYO, Sheridan

Plaintiff's Exhibit 124
Page One

WEIGHT LIMITATION OF EXPLOSIVES TRUCKS

(NOTE: Following is the draft of a statute to limit the amount of a load of explosives carried on the public highways to not more than 5,000 pounds. In order to avoid conflict with the Federal Constitution it should be integrated as closely as possible with the laws of the state limiting the sizes and weights of motor vehicles. Because of differences among the laws of the various states, each state presents an individual job of draftsmanship in adapting this general draft to the use of the state.)

TITLE

Title to be drafted to fit needs of particular state.

BE IT ENACTED, ETC.

Section 1. The term "explosive" shall have the same meaning as in Section _____. (All states have definitions of explosives. It would be best to use an existing definition if it is a satisfactory one. A draft of a definition is attached in case it is needed.)

Section 2. It shall be unlawful to transport upon the public highways of this state in or by a motor vehicle, semi-trailer, trailer or any combination thereof, any explosive or explosives in any quantity in excess of five thousand (5,000) pounds, except as provided in section 3 thereof.

Section 3. The limitation of Section 2 of this act shall not apply --

(a) During any period of war as declared by the Congress of the United States.

(b) To the movement of explosives in aid of mining or excavating operations or in aid of the discovery or production of oil or gas when such explosives are moved between any point or points not regularly served by any means of transportation

other than transportation by motor vehicle and the nearest practical common carrier loading or unloading point.

(c) During any period of grave national emergency provided a permit for each movement of explosives in excess of five thousand (5, 000) pounds is issued by the governor of this state or by any public official designated by him, specifying the route or routes to be followed, the description of the vehicle to be used, the time of such movement, and any other precautions to be observed in such movement to protect the public safety.

Section 4. (a) Every motor vehicle, semitrailer, trailer, or any combination thereof, when used to transport any explosive or explosives on the public highways of this state shall carry a placard or mark on the outside containing the word "explosives" so placed as to be easily seen and read.

(b) The driver of every motor vehicle used to transport any explosive or explosives shall at all times carry with him an inventory of the explosives so transported. Such inventory shall state plainly the weight in pounds of such explosives and the empty weight of the vehicle or combination of vehicles used for such transportation. Any false statement in such inventory shall constitute a violation of this Act.

(c) It shall be the duty of peace officers to inspect and weigh or cause to be weighed vehicles carrying explosives, and to inspect the inventory carried by the driver, in order to enforce this Act.

(d) Any person violating this Act shall be guilty of a misdemenor. (Add penalties where necessary.)

Plaintiffs' Exhibit 125

Ex. No. 5

Identified

In evidence

Limit On Trucking Of Explosives Planned

received subject to authentication proof. Against AMR and PRR (Tr. 28-4546)

ALARMED over repeated violations of safety measures by long distance trucking concerns transporting dangerous explosives over the public highways, law enforcement officers in many states plan to propose state legislative action to limit the loads of explosives to be carried over public highways to 5,000 pounds.

Regulation of the long distance trucking industry engaged in interstate commerce and the enforcement of safety requirements have largely been in the hands of the Interstate Commerce Commission. With the volume of dangerous explosives moving over the public highways increasing in recent years, sheriffs and other law enforcement officials have found that regulation at the state level has become necessary in order to minimize the possibility of a catastrophe which might kill or maim hundreds of people and do untold property damage. The Interstate Commerce Commission does not have an adequate force to police its regulations.

Record Given Study

As evidence of the need for state action the record of one of the large trucking companies engaged in long distance hauling of explosives, found in a report of the Ohio State Highway Patrol, is significant. Within a period of 18 months, ending in June, 1952, this one company was charged with 986 violations in Ohio.

Such flagrant disregard of safety and traffic regulations has aroused the public and law enforcement officers to the point that they feel it is imperative to limit the load of explosives that can be legally hauled over the public highways in peace times.

In proposing that truck loads of explosives be limited to 5,000 pounds, consideration has been given to statements of explosive experts that the area of damage resulting from an explosion is determined by the tonnage involved. Thus, a law limiting the load to 5,000 pounds the possible area of damage would be minimized. It would also provide a law that could easily be enforced.

Sheriffs of many counties across the country have voiced their opposition to the hauling of large quantities of explosives by trucks. Sheriff Howard E. Bechtel of Perkins county, Grant, Neb., testified before an Interstate Commerce Commission hearing opposition to the granting of rights trucking companies to haul explosives.

Association Protested

Previously the Nebraska Sheriffs' and Peace Officers' Association had unanimously adopted a resolution protesting the granting of permits to trucking companies for the right to haul explosives over the public highways. Charles J. Rahn, executive secretary of the National Sheriffs' Association, also testified in protest against granting the permits at the same hearing.

Other organizations which have protested include the National Congress of Parents and Teachers, the Conference of Governors, the American Association of State Highway Officials, the American Automobile Association, the International Association of Chiefs of Police, the American Municipal Association and many states, cities and other regional and local groups.

The following model act has been suggested as a pattern for use in states beset with the problem of dangerous explosive trucking.

WEIGHT LIMITATION OF EXPLOSIVE TRUCKS

TITLE

Title to be drafted to fit needs of particular state.

BE IT ENACTED, ETC.

Section 1. The term "explosive" shall have the same meaning as in Section ——. (All states have definitions of explosives. It would be best to use an existing definition if it is a satisfactory one.)

Section 2. It shall be unlawful to transport upon the public highways of this state in or by a motor vehicle, semi-trailer, trailer or any combination thereof, any explosive or explosives in any quantity in excess of five thousand (5,000) pounds, except as provided in Section 3 hereof.

Section 3. The limitation of Section 2 of this act shall not apply—

(a) During any period of war as declared by the Congress of the United States.

(b) To the movement of explosives in aid of mining or conducting operations or in aid of the discovery or production of oil or gas when such explosives are moved between any point or points not regularly served by any means of transportation other than transportation by motor vehicle and the nearest practical common carrier loading or unloading point.

(c) During any period of grave national emergency provided a permit for each movement of explosives in excess of five thousand (5,000) pounds is issued by the governor of this state or by any official designated by him, specifying the route or routes to be followed, the description of the vehicle to be used, the time of such movement, and any other precautions to be observed in such movement to protect the public safety.

Section 4. (a) Every motor vehicle, semi-trailer, trailer, or any combination thereof, when used to transport any explosive or explosives on the public highways of this state shall carry a placard or mark on the outside containing the word "explosive" so placed as to be easily seen and read.

(b) The driver of every motor vehicle used to transport any explosive or explosives shall at all times carry with him an inventory of the explosives so transported, which shall be subject at all times to inspection by any peace officer. Such inventory shall state plainly the weight in pounds of such explosives and the empty weight of the vehicle or combination of vehicles used for such transportation. Any false statement in such inventory shall constitute a violation of this Act.

(c) It shall be the duty of peace officers to inspect and weigh or cause to be weighed vehicles carrying explosives, and to inspect the inventory carried by the driver, in order to enforce this Act.

(d) Any person violating this Act shall be guilty of a misdemeanor. (Add penalties where necessary.)

Sheriff Keeps On Trail For Year, Finally Gets His Man

SHERIFF'S Deputy W. R. Isbell of Houston, Texas, ended a twelve-month manhunt in November, 1952, when he finally caught up with William Christ Massey, 46, the one-legged Houston swindler who fleeced Shelby county poultry raisers and had a nasty habit of leaving checks that bounced.

Late in 1951, Massey headed south from Houston after charges were filed against him alleging he had "taken the poultry men" for $50,000. Isbell followed in pursuit, caught up with Massey in Mexico City, but was stopped from getting his man by an injunction barring extradition. Massey claimed he gave a Mexican judge $500 for the injunction document.

But Isbell didn't give up. He kept up with any clue that might lead to Massey's arrest. Once he borrowed $500 to go back to Mexico City and then missed his culprit.

Months went by and then—about the middle of November 1952, Isbell got a tip that took him to Dallas with Sheriff's Lieutenant Sam Warfield. Here they nabbed Massey who proved to be a veteran of three prison terms. Brought back to Texas he now faces Harris county indictments charging theft of 12 cows and disposal of mortgaged property.

Members of the National Sheriffs' Association who are past 60 years of age are not eligible for hospitalization and surgery.

Issue of National Sheriff
March 1953

BEST COPY AVAILABLE
from the original bound volume

Plaintiff's Exhibit 126
Page One

CARL BYOIR & ASSOCIATES, INC.
TEN EAST FORTIETH STREET
NEW YORK 16, N. Y.

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* * * * * * * *

September 2, 1952

Mr. Frank Masterson
Motor Carrier Bureau
1 Park Avenue
New York 16, New York

Dear Frank:

Tuesday's meeting was, I think, highly successful despite (certainly not because of!) your absence. Messrs. Hill, Renz, Wickes, McCartney, Hardy, Sears (from our office) and Strouse were present. We had a good general discussion, and Ed Hill filled us in on some railroad attitudes that I know will prove helpful to us.

Four main specifics were considered:

1. Lew Wickes wants Byoir to give you fellows more help in fighting truckers' applications in general -- not just explosives' applications but all kinds. This involves a policy decision which of course we at Byoir can't make. Coly Hardy is going to take up Lew's suggestion with the appropriate railroad committees at the earliest possible time.

2. All the railroad men at the meeting want Byoir to keep the pressure on Riss in every way, and particularly as regards the trucking of explosives. Everyone agreed that nothing can be done now about the Riss application, since the briefs are all in. But there is the "cease and desist" order. Presently, as you of course know, the "cease and desist" thing is involved in a Kansas City court, and that involves us (Byoir) in a jurisdictional question. We are supposed to act only in the 17 Northeastern states, of which Missouri is not one. We understand, of course, that Kansas City is simply

the locale of a court action in what is primarily a Washington, D. C., situation, but we nevertheless must watch our protocol. Hardy is going to take this up with Joe Hays, and either the Western railroads or Byoir will definitely be responsible for Kansas City. If Hardy and Hays decide it's a Western responsibility, we will give Hays every help we possibly can. Wickes has already sent me some valuable updating material. The situation seems to warrant a background memo to editors pointing out how Riss has prevented an ICC decision from going into effect, and also pointing out how a private trucker has sued the U. S. government, but exactly what will be done will have to await the Hays-Hardy decision.

3. Strouse complained (not very bitterly) at the meeting that the fiendish railroad people had not kept him informed of all aspects of the explosives cases before the ICC, and noted in particular that he had not been told about the Hoover and Southwestern explosives application. Hill, Wickes, Renz and McCartney passed the buck to Masterson, saying that he was in the best spot to know of all applications. Could you therefore, Frank, in the future please be sure to notify me of all applications -- including those not in our territory? Such additional information often helps to expand the scope -- therefore the potential usability -- of a news story.

4. A modus operendi for Baggett was agreed upon. It is outlined below.

The next step in L'Affaire Baggett is the Division 5 decision. If it is favorable to us -- if it reverses the examiner, that is -- we of course want to exploit it. The meeting adopted the following procedure:

a. This office will prepare a dummy or tentative press release announcing a favorable Division 5 decision. Attribution will be your Washington office. Release will contain all the relevant background information, and space for quotes from the Division 5 decision when it is announced.

b. Release will be sent to Del Beman in our Washington office, with copies to you.

c. Your Washington man -- I believe he's Gene Salcetti -- will be "ordered" by you to check with the ICC every afternoon. As I understand it, mimeographed copies of ICC decisions are placed on a press table around 4 p.m.; it will be Salcetti's responsibility to look over the table every day. According to Hill, Renz and Wickes, that seems to be the only way we can learn of the Division 5 decision.
If by any chance you or Salcetti hears of the decision before it is announced, you will of course tip off Beman and/or me.

d. When the decision turns up Salcetti will, if it's unfavorable, let Beman know and everyone will forget the matter. If the decision is favorable to us, however, Salcetti will take it immediately to Beman in our Washington office (that's Room 829 National Press Bldg., STerling 6565). Beman will revise the dummy press release into a real one with the information contained in the decision, and will have the release mimeographed.

e. Beman will decide to whom and by what method the release should be distributed. If he considers envelopes to be necessary, Salcetti will furnish Beman with the requisite number of Motor Carrier Bureau Washington office envelopes, and Beman will have them addressed.

f. Salcetti and Beman will distribute the press release. That is, the release will come from Salcetti's office and he will be responsible for physically getting it around. Beman will advise him on methods of distribution, and will use Byoir contacts and know-how to help get maximum coverage. Beman will use Byoir facilities to help Salcetti plant whenever Beman thinks this will be useful.

g. Beman will notify Strouse, who will try to pull the story up to New York on the wires.

h. If the decision turns up late in the afternoon, as Hill thinks it will, release will be headed FOR IMMEDIATE RELEASE and as widespread distribution as possible will be made that night. Certainly, the wire services, the Washington and New York morning dailies and any other morning papers that Beman knows are particularly interested in the story should get the release that night. Any distribution that cannot be made that night will be made the next morning.

i. Beman will work out the list of addressees and method of distribution in advance.

j. Beman will let Salcetti know who to contact should Beman not be in the Byoir office.

k. Beman and Strouse will try to work out a follow-up comment by the AAA.

I guess that does it, Frank. If you think the Baggett procedure is sound, will you let Salcetti know of his responsibilities? I'm not sending him a copy of this.

Please let me know if anything isn't clear, or if you want additional information on any of the subjects.

Most sincerely,

/s/ Dick

Richard Strouse

CC: Del Beman
Edgar Hill
Bill Hutchinson
Coly Hardy
Sam McCartney
Walter Renz
Lewin Wickes, Jr.
Lyle Youngstrom

Plaintiff's Exhibit 127

THE ASSOCIATION OF WESTERN RAILWAYS
LAW DEPARTMENT
280 Union Station Building
517 West Adams Street

CHICAGO 6, ILLINOIS
April 23, 1952

* * * *

TO: DEFENSE COMMITTEE - EXPLOSIVES CASES

Gentlemen:

I annex hereto plain copy of a memorandum on the transportation of explosives over public highways which purports to be a statement by the Defense Department. It is understood that it was submitted to a Congressman who had asked the Defense Department for an explanation of its policy regarding the trucking of explosives.

In my opinion this document certainly does no credit to the Defense Department and contains a number of statements, inferences and excuses which clearly need to be answered.

So far as I know it has been given no publicity as yet. Perhaps a comprehensive analysis needs to be prepared in criticism of the untenable position of the Department in several aspects. It is possible that the Congressman who obtained the document might want both the statement of position and criticism of the same to be inserted in the Congressional Record. If this is done both should be widely circulated to the interested groups which appeared in the explosives cases.

I would appreciate any suggestions and your remarks as to the merit or lack of merit of the arguments presented.

Very truly yours,

/s/ Joseph H. Hays
Counsel

Att.

Plaintiff's Exhibit 127A
Page One

DEPARTMENT OF DEFENSE

STATEMENT ON

TRANSPORTATION OF EXPLOSIVES OVER PUBLIC HIGHWAYS

The approach to this problem as set forth in the statement of the Executive Committee of the Governors' Conference would appear to indicate a belief that the transportation of military explosives over the highways is a new method being established and one which would increase the hazard to the motoring public beyond that which now exists or which has existed in the past. This belief is not borne out by the facts.

In the Motor Carrier Act of 1935 (Part II of the Interstate Commerce Act) Congress provided for regulation of motor carriers and provided that as a "grandfather right" carriers would be permitted to continue to transport such commodities and between the points or within the areas that they had previously been performing such service subject to proper regulations to be promulgated by the Interstate Commerce Commission. Under this provision numerous carriers acquired permanent authority to transport dangerous explosives. Congress also provided in the Motor Carrier Act two other means of obtaining authority to operate in interstate commerce, i. e., on a temporary and the other a permanent basis. Section 210 (a) of the Interstate Commerce Act authorizes the Commission to grant temporary authority (for an aggregate period of 180 days) for service "for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such needs." Permanent operating authority other than that obtained under the so-called "grandfather" clause, can be obtained only after a public hearing. The issue in a proceeding for permanent authority is whether public convenience and necessity require the applicant's proposed operations; whether the operations will serve a useful purpose, responsive to a public demand or need; whether this purpose can or will be served as well by existing carriers;

and whether it can be served by the applicant by the institution of the proposed operations without endangering or impairing the operations of existing carriers contrary to public interest and the national transportation policy. In connection with both temporary and permanent operating authorities, the Commission must also determine whether the applicant is fit to conduct the proposed operations and is willing to conform to the requirements of the Act and the Commission's rules and regulations thereunder.

Ammunition and explosives have been transported for the military departments by carriers duly authorized to perform such service either by the Interstate Commerce Commission or by appropriate state authorities. The military departments support a need for new or additional operating authorities only in those instances where, after investigation, it is found that no carrier has the authority to perform the required service or the services of authorized carriers are found to be inadequate to meet the needs of the military departments. Such support is for temporary authority except in those cases where factual evidence shows that there is a continuing need for service which cannot be adequately met by the duty authorized carriers and that temporary service will not meet the military needs. It should be understood that the military departments only support a need for service leaving to the Interstate Commerce Commission the determination as amongst applicants. Extensive use was made of motor transportation service during, and has been made since, World War II in the transportation of ammunition and explosives. The experience of the military departments in the movement of ammunition and explosives over a period of years by both motor and rail has demonstrated that the movement of ammunition and explosives, in the manner in which they are prepared for transportation, is generally as safe by one mode of transportation as by the other. In this connection, it might be well to point out that military explosives under war conditions are subjected to much more severe tests in the way of handling adverse road conditions and transportation problems than they are subjected to during transportation in the continental

United States. Therefore, military explosives must be designed, manufactured and packaged in such a manner that they may be transported to destination, even under the most unfavorable circumstances of war, in a usable condition.

The Interstate Commerce Commission, pursuant to statute (18 U. S. C. 835), has promulgated strict regulations for the transportation of explosives and other dangerous articles by common carriers on land. Congress has also provided for very heavy penalties for the violation of those regulations. In addition, the military departments have also imposed, and required compliance with, certain regulations of their own, designed to assure the protection of the public, under a self-assumed obligation. The Department of Defense has also instituted a safety compliance program governing motor carriers of explosives and through this program has taken advantage of the unique flexibility of motor transportation to by-pass major centers of population existing between origin and destination. The military departments have always insisted upon full compliance by motor carriers with the regulations of the Interstate Commerce Commission, and with all state and municipal regulations in the transportation of these commodities. The Interstate Commerce Commission reviews the safety and compliance records of carriers before granting them any new or additional authority to transport explosives and ammunition. It is believed pertinent to point out that the regulations which have been established have been promulgated by persons familiar with the characteristics of the commodity considered and its reaction under various conditions to which it might be subjected in its transportation. It is also believed worthy of note that the military departments use only such commercial carriers in the transportation of ammunition and explosives as have been duly authorized by the Interstate Commerce Commission or the proper State regulatory body to perform this service and which are subject to all of the regulations established by those bodies.

Answering specifically other points brought out by the Executive Committee of the Governors' Conference:

(1) The suggestion that temporary or emergency permits should be granted in lieu of permanent authority appears to be based on a false premise as the law (since the expiration of the War Powers Act) limits temporary authorities to an aggregate of 180 days. The restricting of all explosive movements to temporary or emergency permits would require constant shifting to new carriers and inexperienced personnel which would be unsatisfactory to the military departments and greatly increase, rather than reduce, the hazards in the transportation of dangerous explosives.

(2) Shipments of ammunition and explosives constitute a portion of the traffic flow now moving over the highways and continuation thereof should not result in any increase in hazard.

(3) The military departments are not seeking large numbers of additional permanent certificates for such transportation but only support application to the limited extent pointed out above.

(4) The motor carriers presently handling the major portion of such movements have been doing so for a period of years

(5) No substantial increase in burdens upon State highways or departments may be anticipated since very little, if any, increase in motor transportat ion service is being supported by the military departments.

In addition to the provisions of the Motor Carrier Act of 1935 and the Transportation of Explosives Act, Congress in the Transportation Act

of 1940 enuniciated its policy with respect to transportation, the objective of which was the "developing, coordinating, and preserving of a national transportation system by water, highway, and rail *** adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." Clearly, it seems that if the highways were not to be used for, and the highway transportation developed for, among other things, the national defense, then the declared policies of Congress would not be accomplished.

The military departments need all modes of transportation to meet their needs with efficiency and economy. The military departments consider that the application of a permit system is impractical. The permit system referred to was necessitated by divergencies in state laws with respect to weight and size. There is not such a lack of federal law on explosives with which the military department conform.

In view of the need for highway transportation in the ammunition production and supply programs, the adequacy of provisions for its regulation by the Interstate Commerce Commission and the using departments, the demonstrated safety of highway movement of military explosives, the control exercised by the departments in supporting extended operating authorities, and the National Transportation Policy, it is urged that no steps should be taken which will further restrict the employment of highway transportation of military explosives.

Plaintiff's Exhibit 128-1

WESTERN UNION

* * * * * *

CAK

CHICAGO MARCH 9, 1953 698-J

JOINT WIRE

M. J. GALVIN, Attorney, 207 Union Station Bldg., St. Paul, Minn.
G. A. HEMMEL, Chrm., Wisconsin RR Assn., 406 Wisconsin Power & Light Bldg., Madison, Wisc.
M. F. HICKLIN, Secy., Iowa RR Committee 507 Bankers Trust Bldg., Des Moines, Iowa
J. W. WEINGARTEN, 525 Sharp Building, Lincoln, Nebr.
C. J. PUTT, c/o AT&SF Railroad, Topeka, Kansas
DON WELCH, 737 Commerce Exchange Bldg., Oklahoma City, Okla.
WALTER LITTLE, c/o Senator Hotel, Sacramento, Calif.
W. J. JAMESON, Electric Building, Billings, Montana
J. C. STREET, 615 C. A. Johnson Building, Denver, Colo.
LEO J. CROWLEY, Colorado RR Assn., Equitable Bldg., Denver, Colo.

OF POSSIBLE INTEREST REGARDING LEGISLATION ON TRUCKING OF EXPLOSIVES, EXPECT TO HAVE FINISHED BY FRIDAY TWELVE NEWSPAPER SIZE PAGES OF REPRODUCED NEWSPAPER CLIPPINGS AND PHOTOGRAPHS SHOWING TRUCK ACCIDENTS MOVEMENT OF EXPLOSIVES AND EDITORIALS REGARDING SAME. SHOULD BE VERY EFFECTIVE PIECE. WILL SHIP SAMPLE COPIES AND AWAIT YOUR INSTRUCTIONS AS TO SUPPLY YOU MAY NEED AFTER YOUR OPPORTUNITY TO REVIEW.

JOSEPH H. HAYS

Plaintiff's Exhibit 128-2

M. J. GALVIN
ATTORNEY AT LAW
207 UNION DEPOT BUILDING
SAINT PAUL 1, MINNESOTA

March 9, 1953

Mr. Joe Hays, Counsel
Ass'n of Western Railways
280 Union Station
Chicago 6, Illinois

Dear Joe:

I have your telegram and would appreciate very much if you would send me 200 of the reproductions on explosives as soon as you have them ready. I won't need to review it.

Very truly yours,
/s/ M. J. Galvin

M. J. Galvin
Public Relations Counsel
MINNESOTA RAILROADS

MJG:a

Plaintiff's Exhibit 128-3

March 12, 1953

Messrs:

C. A. Hemmel, Chrm., Wisconsin RR Assn., 406 Wisc. Power & Light Bldg., Madison, Wisc.
M. F. Hicklin, Secy., Iowa RR Committee, 507 Bankers Bldg., Des Moines, Ia.
J. W. Weingarten, 525 Sharp Building, Lincoln, Nebr.
C. J. Putt, Solr. for Kansas, AT&SF RR, Topeka, Kansas
Don Welch, 737 Commerce Exchange Bldg., Oklahoma City, Okla.
Walter Little, c/o Senator Hotel, Sacramento, Calif.
W. J. Jameson, Coleman, Jameson Lawry, Electric Bldg., Billings, Mont.
J. C. Street, 625 C. A. Johnson Building, Denver, Colo.
Leo J. Crowley, Secy., Colorado RR Assn., Equitable Bldg., Denver, Colo.

Gentlemen:

Supplementing my wire of March 9th to each of you, I am enclosing herewith a sample set of twelve newspaper size pages of reproduced newspaper clippings, photographs and editorials dealing with the trucking of dangerous explosives and the inherent hazards involved.

As previously stated, this should be a very effective piece in the promotion of legislation designed to limit the transportation of dangerous explosives over the public highways.

After you have reviewed the attached, it would be appreciated if you will advise as quickly as possible the number of sets you will require.

Very truly yours,

Counsel

Enc.

Plaintiff's Exhibit 128-4

March 13, 1953

Mr. C. E. Davis
c/o City Ticket Office
Rock Island RR. Co.
Des Moines, Iowa

Dear Mr. Davis:

In a telephone conversation with Mr. Hays today he suggested I forward to you a set of the enclosed reproduced newspaper clippings, editorials and photographs. Mr. Hicklin has already been furnished a set.

Very truly yours,

Chief Clerk

Encl.

Plaintiff's Exhibit 128-5

March 13, 1953

Mr. Arthur Pugh
208 LaFonda Hotel
Santa Fe, New Mexico

Dear Art:

In a telephone conversation with Mr. Hays today he requested that I send a set of the enclosed reproduced newspaper clippings, editorials, and photographs on the highway transportation of explosives.

With kindest personal regards to you and Mrs. Pugh, I am

Very truly yours,

Encl.

Plaintiff's Exhibit 128-6

March 13, 1953

Mr. W. P. Kennedy, Pres.
Brotherhood of RR. Trainmen
Standard Building
Cleveland 13, Ohio

Dear Mr. Kennedy:

I am enclosing herewith a set of reproduced newspaper clippings, editorials, and photographs dealing with the transportation of dangerous explosives over the public highways. We are forwarding to you today under separate cover 50 additional sets for your use.

Very truly yours,

Counsel

Encl.

Plaintiff's Exhibit 128-7

March 18, 1953

Mr. W. D. Johnson, Vice President
Order of Railway Conductors
10 Independence Avenue, S. W.
Washington 4, D. C.

Dear Mr. Johnson:

We are forwarding to you today, under separate cover, fifty sets of newspaper clippings, photographs and editorials dealing with the transportation of dangerous explosives over the public highways, for whatever use you may wish to make of them.

Very truly yours,

SPECIAL REPRESENTATIVE

[by FS]

Plaintiff's Exhibit 128-8

BROTHERHOOD OF RAILROAD TRAINMEN

General Offices
Cleveland 13, Ohio

* * *

March 18, 1953

WPK:Mc

Mr. Joseph H. Hays, Counsel
The Association of Western Railways
280 Union Station Bldg.
517 West Adams Street
Chicago 6, Illinois

Dear Sir and Brother:

Many thanks for your letter of March 13th advising of forwarding 50 additional sets of reproduced newspaper clippings, editorials and photographs dealing with the transportation of dangerous explosives over the highways of the nation.

This will also acknowledge the 50 additional sets which arrived today. Copies of the sets are being forwarded to the State Legislative Representatives in states where bills providing for regulation of motor vehicles handling explosives are pending.

Your promptness and kindness in furnishing the requested material is appreciated.

Sincerely yours,
/s/ W. P. Kennedy
President

Plaintiff's Exhibit 128-9

March 19, 1953

Mr. Guy Brown, Asst. Grand Chief
Brotherhood of Locomotive Engineers
B. of L. E. Building
Cleveland, Ohio

Dear Mr. Brown:

We are forwarding to you today, under separate cover, sixty sets of newspaper clippings, photographs and editorials dealing with the transportation of dangerous explosives over the public highways, as per your request yesterday.

Very truly yours,

SPECIAL REPRESENTATIVE

Plaintiff's Exhibit 128-10

March 24, 1953

Mr. Joseph D. Feeney, Jr.
Mayflower Hotel
Washington, D. C.

Dear Joe:

Pursuant to our telephone conversation I am enclosing four copies of the explosive clippings.

Very truly yours,

Plaintiff's Exhibit 128-11

GRAND OFFICE
BROTHERHOOD OF LOCOMOTIVE ENGINEERS
CLEVELAND 14, OHIO

EXECUTIVE DEPARTMENT
GUY L. BROWN

First Assistant Grand Chief Engineer

March 31, 1953

Mr. Frank Haas, Special Representative
The Association of Western Railways
280 Union Station Building
517 West Adams Street
Chicago 6, Illinois

Dear Mr. Haas:

This will acknowledge your letter of March 19 wherein you advise what you have forwarded, under separate cover, sixty sets of newspaper clippings, photographs and editorials dealing with the transportation of dangerous explosives over the public highways.

You will be interested in knowing that copies of these sets of clippings, etc., have been forwarded to all of our State Legislative Chairmen.

Yours very truly,

/s/ Guy L. Brown

First Assistant Grand
Chief Engineer

Plaintiff's Exhibit 128-12

April 13, 1953

Mr. Russell E. Singer,
Executive Director
American Automobile Assn.
17th and Penna. Ave., N.W.
Washington, D. C.

Dear Russell:

Knowing your concern in the matter of the trucking of dangerous explosives, I am sure you will be interested in the enclosed newspaper clippings which in my opinion graphically illustrate the hazards resulting from the movement of such commodities over the roads and streets.

I am sending along copies to Messrs. Montgomery and Netherton.

Very truly yours,

Counsel

Encl.

cc: Mr. A. J. Montgomery
Mr. Ross D. Netherton, Jr.

Plaintiff's Exhibit 128-13

April 13, 1953

PERSONAL

Mr. Granville Curry
Curry and Dolan
631 Southern Bldg.
Washington 5, D. C.

Dear Granville:

I know that you will find interesting the enclosed newspaper clippings pertaining to the trucking of dangerous explosives. I have sent along copies to Messrs. Singer, Montgomery and Netherton.

With best, personal regards, I am

Very truly yours,

Counsel

Encl.

Plaintiff's Exhibit 128-14

THE PENNSYLVANIA RAILROAD COMPANY
LEGAL DEPARTMENT

1740 Broad Street Station Building
Philadelphia 4, Pennsylvania

April 16, 1953

J. H. Hays, Esq., Counsel
Association of Western Railroads
280 Union Station
Chicago, Ill.

Dear Joe:

I have your note of April 14 sending along "newspaper clippings illustrating hazards of trucking explosives." This is really a very effective presentation. I assume that it has been gotten pretty much into shape before the recent explosions at Lewis.

Would you be good enough to send me on several more copies for use in talking with state people about the pending Baggett Case?

Yours truly,

/s/ Lew

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-

Plaintiff's Exhibit 128-15

AAA

AMERICAN AUTOMOBILE ASSOCIATION
Organized 1902
NATIONAL HEADQUARTERS

Pennsylvania Avenue at 17th Street
WASHINGTON 6, D. C.

* * *

April 17, 1953

Explosives

Mr. Joseph H. Hays, Counsel
The Association of Western Railways
280 Union Station Bldg.,
517 W. Adams Street
Chicago 6, Illinois

Dear Joe:

Thank you very much for sending me with your letter of April 13 the reproduction of newspaper clippings concerning damage resulting from transportation by motor truck.

I am glad to have this material for reference purposes.

By the way, what are the prospects of an ICC decision?

Incidentally, what happened to that terrific explosion out in Ohio a few weeks ago resulting from transportation of explosives by railroad? I saw some publicity on this explosion and it looked like terrible damage. Fortunately no one was killed, but the property damage was most severe.

I guess it is just a case where you can't make the carrying of explosives safe - whether by rail or truck.

With all good wishes, I remain

Cordially yours,

/s/ Russell

Executive Vice-President

RES:Mc

Copy Mailed to Mr Hays
4-20

Plaintiff's Exhibit 128-16

April 20, 1953

Mr Hays:
For Note

Mr. L. W. Wickes, Jr.
Assistant General Solicitor
The Pennsylvania Railroad Co.
1740 Broad Street Station Bldg.
Philadelphia 4, Pa.

Dear Lew:

In Mr. Hays' extended absence from the office I am taking the liberty of replying to your letter of April 16th and furnishing you herewith five additional copies of reproductions of newspaper clippings, editorials, etc. having to do with the trucking of dangerous explosives.

Best regards.

Very truly yours,

CHIEF CLERK

Y.S.

Encs.

Plaintiff's Exhibit 128-17

CURRY AND DOLAN
COUNSELLORS AT LAW
SOUTHERN BUILDING
WASHINGTON, D. C.

Expls
clipping

* * *

April 27, 1953

Joseph H. Hays, Esq.
Counsel,
The Association of
Western Railways,
286 Union Station Bldg.
Chicago 6, Ill.

Dear Joe:

It was good of you to send me, with your letter of April 13, the very interesting newspaper clippings pertaining to the trucking of dangerous explosives.

With best wishes,

Very truly yours,

/s/ R. Granville Curry

Plaintiff's Exhibit 129

THE PENNSYLVANIA RAILROAD COMPANY
LEGAL DEPARTMENT
1740 Broad Street Station Building
Philadelphia 4, Pa.

* * * * * *

January 9, 1953

F. X. Masterson, Esq., Manager
Motor Carrier Bureau
1 Park Avenue
New York, N. Y.

J. H. Hays, Esq., Counsel
Assn, of Western Railroads
280 Union Station
Chicago, Ill.

Gentlemen:

According to earlier conversations with Frank and talk with Joe in Washington recently, Charles Abeles has apparently followed up fairly well about developments in the South. I have today the following telegram and will keep you informed on further developments:

"AIR MAILING YOU SPECIAL DELIVERY TODAY COMMISSION NOTICE OF APPLICATION OF DUNBAR TRANSFER & STORAGE CO FOR TEMPORARY MOTOR CARRIER AUTHORITY FOR TRANSPORTATION OF EXPLOSIVES BETWEEN CONDOVA, TENNESSEE AND MEMPHIS TENNESSEE AND WEST MEMPHIS ARKANSAS PROTEST DUE JANUARY 16."

Very truly yours,

/s/ Lew

Lewin W. Wickes, Jr.
Assistant General Solicitor

DWW-EB-
cc - Messrs. James W. Nisbet
Frank J. Steinbrecher

Plaintiff's Exhibit 130

THE PENNSYLVANIA RAILROAD COMPANY
LEGAL DEPARTMENT
1740 Broad Street Station Building
Philadelphia 4, Pennsylvania

December 8, 1952

Re: Explosives applications by motor carriers affecting Southern Territory.

F. X. Masterson, Esq., Manager
Motor Carrier Bureau
1 Park Avenue
New York, N.Y.

W. A. Rens, Esq., General Attorney
Lehigh Valley Railroad
148 Liberty Street
New York, N. Y.

Gentlemen:

Following up my letter of the other day, I am enclosing copy of letter addressed on December 4, 1952, by Charles T. Abeles, Esq., Senior General Attorney, Seaboard Air Line Railroad Company, to Mr. J. G. Kerr, Chairman, Southern Freight Association.

Yours truly,

/s/ Lew

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-encl.

Plaintiff's Exhibit 130 A

SEABOARD AIR LINE RAILROAD COMPANY
Law Department

Norfolk, Va., December 4, 1952-B

Mr. J. G. Kerr, Chairman
Southern Freight Association
Atlantia, Georgia

P-75241-5-C-A

Attention: Mr. E. P. Crow

Dear Mr. Kerr:

As you know, there has been intense activity before the Interstate Commerce Commission and also considerable litigation in the courts involving the transportation of explosives by highway. Counsel who have participated in these cases feel it highly important that they be immediately advised of the initiation of any further proceedings involving truck transportation of explosives wherever they may arise. I am therefore writing to request that should any such proceedings be brought before either the Interstate Commerce Commission or any of the state commissions within the South I be advised at the earliest possible moment. Should you learn of any court proceedings I should also like to be informed of them. I trust that you will find it possible to give such matters this special handling.

Very truly yours,

/s/ Charles T. Abeles,
Senior General Attorney

cc: Mr. L. W. Wickes, Assistant General Solcr.
Pennsylvania Railroad Company
1740 Broad Street Station Building
Philadelphia 4, Pennsylvania

Plaintiff's Exhibit 131

THE PENNSYLVANIA RAILROAD COMPANY

PHILADELPHIA 4
Legal Department

December 5, 1952

F. X. Masterson, Esq., Manager
Motor Carrier Bureau
1 Park Avenue
New York, N. Y.

W. A. Renz, Esq., General Attorney
Lehigh Valley Railroad
143 Liberty Street
New York, N. Y.

Gentlemen:

After our talk in New York, I mentioned the state of the work to Charlie Abeles, and the fact that we should all try to keep in touch. He suggested that he have his people let him know of any explosives application in the south, and that he immediately pass it along to us. I thought this a fine idea.

Very truly yours,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB

Plaintiff's Exhibit 132

THE PENNSYLVANIA RAILROAD COMPANY
PHILADELPHIA 4
Legal Department

October 16, 1953

F. J. Steinbrecher, Esq., Santa Fe Rwy. System, Chicago, Ill.
W. A. Renz, Esq., Gen'l Atty., L. V. R. R. Co., New York, N. Y.
F. X. Masterson, Esq., Motor Carrier Bureau, New York, N. Y.
Thorsund A. Miller, Esq., Southern Pac. Co., Washington, D. C.

Re: Explosives Cases

Gentlemen:

It may be that you have already received a copy from the Association of Western Railroads of the Chicago Daily Tribune editorial for October 13, 1953 on "Explosives on the Highways." I received the attached from Joe's office, and I feel it so important I want to make sure you don't miss it.

It seems to me the editorial so perfectly expresses the position we have been trying to assert in the Explosives Cases, that it clearly reflects the coordination between the legal and public relations work that we have achieved. The tremendous advantage of this clear expression of a rational position on the part of the railroads helps to take the "propaganda" curse off our propaganda.

Furthermore, if we can make a reality of the objective stated by the editorial, that this is one monopoly that should be given back to the railroads, we will have established the principle that there is certain traffic that should move primarily by rail; and ultimately, I believe, this principle, once established, could be extended to other certain commodities.

Very truly yours,

Lewin W. Wickes, Jr.
Assistant General Solicitor

LWW-EB-encl.

cc: E. V. Hill, Esq., Chairman,
Traffic Executive Assn., E. R.
New York, N. Y.

Plaintiff's Exhibit 132A

THE ASSOCIATION OF WESTERN RAILWAYS
Room 280 Union Station Building
517 West Adams Street
Chicago 6, Illinois

CHICAGO DAILY TRIBUNE, Tues., Oct. 13, 1953:

EXPLOSIVES ON THE HIGHWAYS

Three elderly sisters, two of them residents of Geneva, Ill., were killed when their automobile was struck in the outskirts of Omaha by a truck laden with explosives. Both vehicles went into the ditch and burned, and the truck's cargo, 105 millimeter shells and other ammunition being transported for the army, exploded and drove spectators and residents of the neighborhood to cover.

In this instance the explosives were not the actual agents of death but they did endanger other lives. Accidents involving truck-hauled explosives have been increasing recently since the trucking industry was able to persuade government agencies to give it some of the dangerous traffic formerly confined to the railroads.

The railroads have protested vigorously against this loss of business, and public interest is on their side. Explosives are dangerous no matter how they are transported. The risk is minimized by rail shipments, not only because accidents are less frequent on the rails than on highways, but also because railroad tracks and yards are as a rule better segregated from areas where large numbers of people could be killed or injured by an explosion. This is one monopoly that should be given back to the railroads.

Plaintiff's Exhibit 133

July 3rd, 1952

Mr. Lewin Wickes, Jr.
Room 1740
Broad Street Station Bldg.
Philadelphia 4, Pennsylvania

Dear Lew:

When I wrote you yesterday, I forgot to ask ~~you~~ if you would be good enough to forward us a print of your movie of the Riss explosive truck on the Pennsylvania Turnpike. As I believe I had told you, I want to get a set of stills from the film and use them to try for a national magazine story on explosives.

Since I will be away next week, you had better address the film to Miss Rae Green here.

If anything comes up in my absence, you can get in touch with Coly Hardy, whom you know; with Jim Marine, who is familiar with all our activities; or with a new man, Gordon Sears, who is pretty well oriented on the explosives situation. All work on the ERTC account at Carl Byoir here.

Sincerely,

/s/ Richard Strouse

Richard Strouse

RS/rg

Plaintiff's Exhibit 134
Page One

TRAFFIC EXECUTIVE ASSOCIATION - EASTERN RAILROADS
MOTOR CARRIER BUREAU
One Park Avenue
New York 16, New York

PROCEEDINGS

Meeting held Friday, February 8, 1952, in New York

* * * * * * *

PRESENT:

Messrs:

Neal Holland	Atty,	B&M RR	Boston,	Mass.
R. B. Bockmiller	ACA,	B&O RR,	Baltimore,	Md.
Eugene E. Hunt	Atty,	B&O RR,	Baltimore,	Md.
E. Keil, by K. S. Bailey	APTM,	CRRofNC-CRRofPa.	New York,	N. Y.
Earle J. Harrington	CC,	CRRofNJ,	New York,	N. Y.
J. F. McWilliams	Rep,	C&EI RR	Chicago,	Ill.
Paul F. Robinson	GA,	D&H RR,	New York,	N. Y.
W. J. Stumpf	AGFA,	DL&W RR,	New York,	N. Y.
E. N. Hambly	GFA,	Erie RR,	New York,	N. Y.
E. F. Neagle by C. J. Brannick	CDA,	LV RR,	New York,	N. Y.
Walter A. Renz	GA,	LV RR,	New York,	N. Y.
E. C. Helland	GFA,	Monou,	New York,	N. Y.
A. R. Ramonte	CA,	NYC RR,	New York,	N. Y.
K. H. Lundmark	Atty,	NYC RR	New York,	N. Y.
H. D. Boynton	CC,	NYNH&H RR,	New Haven,	Conn.
J. M. Hurley by J. J. Drugan	ATM,	NYO&W RR,	New York,	N. Y.
T. W. Blake, Supvr. Motor Serv.		P RR,	Philadelphia,	Pa.
S. J. McCartney	AE,	P RR,	Philadelphia,	Pa.
W. C. Sommers by H. Gray Hamilton	GFA,	P RR,	Pittsburgh,	Pa.
A. E. Johnston by W. H. Wait	APTM,	P RR,	Chicago,	Ill.
K. G. Crowl	AGFA,	P RR,	Philadelphia,	Pa.
Lewin W. Wickes, Jr.	AGS,	P RR,	Philadelphia,	Pa.
Carl Helmetag, Jr.	AGC,	P RR,	Philadelphia,	Pa.
Ira L. Fish, by A. F. Hysson	GF&PA,	PRSL,	Camden,	N. J.
Geo. T. Barry	CA,	Wab. RR,	St. Louis,	Mo.

F. X. MASTERSON,
Presiding

* * * * * * *

The meeting convened pursuant to Call for Meeting, dated February 1, 1952. The subject considered was the Railroads' progress made in:

RISS & COMPANY, INC. - MC 200 SUB 84
AND RELATED APPLICATIONS FOR TRANSPORTATION OF EXPLOSIVES

Mr. Lewin W. Wickes, Jr., who is chairman of the legal and traffic committee handling the explosive cases gave a resume of the high-lights of the Riss case. The question of taking moving pictures of trucks transporting explosives was also discussed. Both the Pennsylvania Railroad and the Santa Fe took moving pictures of trucks transporting explosives for use in the Riss & Company case. It was agreed by all present that this practice should be continued and that we should attempt to secure more pictures showing violations of both state and ICC regulations by trucks transporting explosives.

A discussion was also had regarding the filing of a complaint with the Interstate Commerce Commission in connection with the operations of Riss & Company, Inc., beyond the scope of their temporary authority. It was voted that the Motor Carrier Bureau file such a complaint. This complaint has since been filed.

It was agreed by all parties that the bill for services in connection with the taking of moving pictures already mentioned be allocated among the various roads.

Adjourned.

F. X. MASTERSON, Mgr.

Dated: March 3, 1952

Copy: Mr. John J. Fitzpatrick
Mr. E. V. Hill
Mr. I. Van Ummersen
Attorneys and Freight Representatives handling motor carrier
Committees for Eastern Railroads.
Conferees.

FXM/pc

Plaintiff's Exhibit 135
Page One

INTERSTATE COMMERCE COMMISSION
Washington 25

I, GEORGE W. LAIRD, Acting Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Letter dated Washington 25, D. C., June 11, 1953, addressed Mr. George W. Laird, Acting Secretary, Interstate Commerce Commission, Washington 25, D. C., signed F. L. Haerlin, Captain (SC), USN, Assistant Chief for Transportation, Bureau of Supplies and Accounts, Department of the Navy; and

Carbon copy of letter dated June 18, 1953, addressed F. L. Haerlin, Captain (SC), USN, Assistant Chief for Transportation, Department of the Navy, Bureau of Supplies and Accounts, Washington 25, D. C., signed G. W. Laird, Acting Secretary, Interstate Commerce Commission,

Docket No. MC-200 (Sub-No. 60 TA), Application of Riss & Company, Inc., Kansas City, Missouri, the originals of which are nowon file and of record in the office of said Commission.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Commission this 10th day of July, A. D. 1953.

/s/ George W. Laird

ACTING SECRETARY OF THE
INTERSTATE COMMERCE COMMISSION

June 18, 1953

559734
Refer: O-161
MC 200
Sub 60 TA

F. L. Haerlin, Captain (SC), USN
Assistant Chief for Transportation
Department of the Navy
Bureau of Supplies and Accounts
Washington 25, D. C.

Captain:

I have for acknowledgment your letter of June 11, 1953, in which you state that the Secretary of the Navy, through his duly authorized representative, on behalf of the Department of Defense requests that consideration be given by this Commission to the postponement of the effective date of the order of the Commission interpreting the temporary authority operating rights of Riss & Company, Inc., in MC 200 Sub 60 TA, to the extent the Department of Defense supported a need for motor carrier service in Docket No. MC 200 Sub 84, pending the final determination of that carrier's permanent authority in Sub 84. You state that the Department of the Navy has certain points to and from which shipments of explosives are moved and the temporary operating rights of Riss & Company, as interpreted by this Commission, would not allow that carrier to perform a complete service on behalf of the Department of the Navy.

For your information, the United States District Court for the Western District of Missiouri, Western Division, in Civil Action No. 7694, Riss & Company, Inc. v. United States and Interstate Commerce Commission, on May 7, 1953, issued its decision and order dismissing the complaint filed by Riss & Company, Inc., against the order of the Interstate Commerce Commission dated June 2, 1952. The effective date of the Commission's order has been postponed until July 15, 1953, before which date it is expected that the Court will act on a motion filed by the plaintiff for a new trial.

The Chairman of the Interstate Commerce Commission has directed me to advise you that in the report of the Commission decided June 2, 1952, it was indicated that it was never the intent of the Commission

to grant temporary authority to Riss & Company to the extent that that carrier was performing the operations under MC 200 Sub 60 TA; that as a consequence, the Commission outlined in some detail the territorial scope of operations which could be conducted under that grant of temporary authority; that if a need for service beyond the scope of that authority is required by the Department of the Navy, or other branches of the Department of Defense, the carrier may file a properly supported application for temporary authority covering such operations which, in turn, will be submitted to the Commission for consideration; and that it is suggested that this procedure be followed, as the Commission has indicated in the order of June 2, 1952, the territorial scope of the operations which was meant to be granted in MC 200 Sub 60 TA, and service to the points mentioned in your letter was never contemplated in that proceeding.

Respectfully,

Acting Secretary.

EST/ebh

CC: Dist. Director Simmons

Plaintiff's Exhibit 135
Page Four

DEPARTMENT OF THE NAVY
BUREAU OF SUPPLIES AND ACCOUNTS
WASHINGTON 25, D. C.

559734

MAA
L17
11 June 1953

Mr. George W. Laird
Acting Secretary
Interstate Commerce Commission
Washington 25, D. C.

Dear Sir:

This has reference to the Commission's order of 2 June 1952 in Docket No. MC-200 (Sub-No. 60TA); Riss & Company, Inc., Interpretation of Temporary Authority, which order is now scheduled to become effective on 15 June 1953.

The Secretary of the Navy, through his duly authorized representative on behalf of the Department of Defense, requests that consideration be given to postponement of the effective date of the aforementioned order of interpretation, to the extent the Department of Defense supported a need for motor carrier service in Docket No. MC-200 (Sub-No. 84); Riss & Company, Inc., Extension - Explosives, et al, until final determination of the application in MC-200 (Sub-No. 84).

As a matter of information, in the extensive hearings in MC-200 (Sub-No. 84), and the other cases consolidated therewith in the examiner's recommended report, the Department of Defense submitted evidence as to the need for motor carrier service for the transportation of ammunition, explosives and component parts thereof between naval installations located at or near Crane, Indiana, McAllister, Oklahoma and Hastings, Nebraska, on the one hand, and, on the other, Earle, New Jersey, Hingham, Massachusetts, Portsmouth and Yorktown, Virginia, and Indian Head, Maryland; between Earle, New Jersey, on the one hand, and, on the other, Yorktown and Hingham; and between Crane and Hastings; also between points in Ohio, on the one hand, and, on the other, military installations in the states of

Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania and Rhode Island. The principal installations in those states are:

Seneca Ordnance Depot, Romulus, New York
Letterkenney Ordnance Depot, Chambersburg, Pennsylvania
Ravenna Arsenal, Ravenna, Ohio
Picatinny Arsenal, Dover, New Jersey
Plum Brook Sub-Depot, Sandusky, Ohio
Erie Ordnance Depot, LaCarne, Ohio
Lima Ordnance Depot, Lima, Ohio
Rossford Ordnance Depot, Toledo, Ohio
Frankford Arsenal, Philadelphia, Pennsylvania
Watervliet Arsenal, Watervliet, New York
Watertown Arsenal, Watertown, Massachusetts
Delaware Ordnance Depot, Fedricktown, New Jersey
Raritan Arsenal, Nixon, New Jersey
Aberdeen Proving Ground, Aberdeen, Maryland
Army Chemical Center, Edgewood, Maryland
Curtis Bay Sub-Depot, Baltimore, Maryland
(Tr. A-109, A-118, A-193, A-210, A-288, A-483 - A-492)

As shown by that record, the Department of Defense also supported a need for motor carrier service for the transportation of ballistics samples in less-than-truckload quantities from Sioux Ordnance Depot, Sidney, Nebraska, Cornhusker Ordnance Plant near Grand Island, Nebraska, Iowa Ordnance Plant near Burlington, Iowa, Savanna Ordnance Depot, Savanna, Illinois and Joliet Arsenal, Joliet, Illinois to Jefferson Proving Ground near Madison, Indiana. (Tr. A-488 - A-491).

The aforementioned interpretation restricts the Riss operations under Sub-No. 60TA to large commercial centers whereas, for safety reasons, the ammunition depots from and to which ammunition and explosives move are located at other than such commercial centers. Riss, under the modified interpretation in Sub-No. 60TA, will continue to have authority to serve Washington, D. C. but that carrier will not have authority to serve Indian Head, Maryland. Likewise, Riss will continue to have authority to serve Boston, but not Hingham, Massachusetts, where the ammunition depot is located. Riss will continue to have authority under Sub-No. 63TA to transport explosives between Naval Ammunition Depot,

Crane, Indiana and Naval Ammunition Depot, Earle, New Jersey. Inasmuch as this particular authority is tied down to naval ammunition depots, Riss would be precluded from interchanging equipment at NAD Crane with other carriers on traffic moving to and from points west thereof. Likewise, for example, Riss will be able to continue to serve Baltimore but not Edgewood and Aberdeen, Maryland; and Akron, Ohio but not Ravenna Arsenal, Ravenna, Ohio.

The placing of the aforementioned order of 2 June 1952 into effect at this time will leave the Department of Defense without adequate transportation service for the movement of ammunition and explosives and will impair its ability to meet requirements with respect thereto. For example, the Navy at present has a considerable movement of ammunition between Indian Head, Maryland and such western points as Shoemaker, Arkansas, DeSoto, Kansas, McAllister, Oklahoma and Hastings, Nebraska. Part of this traffic will move by rail. However, rail service is inflexible and is inadequate to meet urgent deadline dates in many instances. Baggett Transportation Company has service between Indian Head, Maryland and Crane, Indiana. However, Baggett is a contract carrier and cannot enter into arrangements for through movement with interchange of trailers without transfer of lading en route. Transfer of lading en route is prohibited for safety reasons. There is no through motor carrier service with interchange of trailers without transfer of lading between Indian Head, Maryland and these western points.

As mentioned above it is requested that consideration be given to postponement of the effective date of the aforementioned order of interpretation, to the extent that the Department of Defense supported a need for motor carrier service in Docket No. MC-200 (Sub-No. 84), et al, until final determination of the application in Docket No. MC-200 (Sub-No. 84). In this connection it is felt that careful consideration should be given to the dissenting opinion of Commissioner Mahaffie (which opinion was

concurred in by Commissioners Lee and Knudson) that the Commission should not grant the railroad's petition, but that the temporary authority should be continued in effect so as to expire upon final determination of its [Riss] application for permanent authority in MC-200 (Sub. No. 84).

/s/ F. L. Haerlin

F. L. HAERLIN
Captain (SC), USN
Assistant Chief for Transportation

Plaintiff's Exhibit 136

CARL BYOIR & ASSOCIATES, INC.
175 South High Street
COLUMBIS 15, OHIO

* * *

June 8, 1953

Mr. Lewin W. Wickes, Jr.
Assistant General Solicitor
The Pennsylvania Railroad Co.
Legal Department
1740 Broad Street Station Bldg.
Philadelphia 4, Pa.

Dear Lew:

Another little development to report. Don't know whether it's good or bad. Paul Deaton insists it won't make any difference, but I find that hard to believe. Here it is:

Our friend John Case is leaving the PUCO at the end of the month. Gov. Lausche just appointed him to a common pleas bench vacancy in Washington Court House (Fayette county) Ohio. Suggest you might want to drop him a note of congratulations, etc. Washington C. H. is John's home stamping grounds.

John's work with the commission (and the Riss case) is being taken over by James Burtch, a youthful attorney whom Deaton describes as "a blood brother protege of Ohio Atty. Gen. C. William O'Neil." Deaton urges extreme caution and care in dealing with Mr. Burtch for a while.

Paul says he'll make sure Case doesn't leave without following through on the Riss case. We're sitting tight on it for the time being. If it looks like it might die, however, we'll nudge it into action via the publicity route.

Regards,

/s/ Don Stull

DWS*vs

CC: C. C. Hardy
Jim Devine

Plaintiff's Exhibit 137

May 4, 1954

Re: Application of The Public Utilities Commission
: of Ohio v. Riss & Co., Inc. -Dkt. MC-C-1413

Mr. L. W. Wickes, Jr., AGS
Pennsylvania Railroad
Suburban Sta. Bldg.
Philadelphia, Pa.

Dear Lew:

We have just received copy of notice from the Commission directing complainant to comply with the Commission's order of May 21, 1953, on or before May 7, 1954, failing which consideration will be given to the dismissal of the complaint.

The order of May 21, 1953 apparently is the Commission's order requesting the Public Utilities Commission of Ohio to make more specific its allegations of unfitness on the part of Riss.

I guess this is the end of the road as far as this particular complaint is concerned. I, of course, am assuming that Ohio wants no further part of this.

Very truly yours,

/s/ F. X. Masterson,

F. X. Masterson, Mgr.

FXM:nd

cc: Mr. J. W. Nisbet

Mr. F. J. Steinbrecher

Plaintiff's Exhibit 138

July 2, 1954

Re: The Public Utilities Commission of Ohio v. Riss and Co., Inc.
Docket No. MC-C-1413

Mr. L. W. Wickes, AGS
The Pennsylvania Railroad
Philadelphia, Pa.

Dear Lew:

Notice has just been received on the above-entitled matter, which has been set for a prehearing conference at 9:30 a.m. o'clock a.m. USST, on July 9, 1954, at the Interstate Commerce Commission, Washington, D.C., with Examiner K. T. Croft presiding.

The notice sets forth the usual matters that will be discussed including "Whether evidence of violations of State Laws or State regulations which are not alleged to be violations also of the Interstate Commerce Act or or the Regulations of the Interstate Commerce Commission will be offered and if so, the admissibility of such evidence and the form and character thereof, if admissible."

This looks like the opportunity we have been awaiting. Let me know who you think should be there for us.

Very truly yours,

F. X. Masterson,
Manager

FXM:ts

Plaintiff's Exhibit 139

THE PENNSYLVANIA RAILROAD COMPANY
LEGAL DEPARTMENT
1740 Broad Street Station Building
Philadelphia 4, Pennsylvania

August 31, 1954

Mr. Jim Marine
Carl Byoir & Associates
10 E. 40th Street
New York, N. Y.

Dear Jim:

In Horace's absence and since you know the background, I am sending you copies of petition of Pennsylvania and New Jersey to intervene in P.U.C.O. v. Riss.

Can you do anything with this to follow up? If you can:

Bear in mind Riss is right about the effective date of the section of the regulations making state violations also Federal violations. But general statements in the petition are valuable.

Also--Ohio's statement at the pre-hearing conference that it intends to file a second amended complaint probably makes moot the petition to reconsider the order granting the motion to strike part of the first amended complaint.

Yours truly,
/s/ Lew
Lewin W. Wickes
Assistant General Solicitor

LWW-EB-encl.

cc - Mr. Horace L. Lyon
c/o Mr. Neil McCormick A.G.F.A.
New York Central System
Central Terminal
Buffalo 12, N. Y.

Plaintiff's Exhibit 149
Page One

SENATE OF MARYLAND

NO. 236

MR. KIMBLE -- Judicial Proceedings

By the SENATE, February 23, 1953.

Introduced, read first time and referred to the Committee on Judicial Proceedings.

By order, C. ANDREW SHAAB, Secretary.

A BILL

ENTITLED

AN ACT to repeal and re-enact, with amendments, Section 264 of Article 66 1/2 of the Annotated Code of Maryland (1951 Edition), title "Motor Vehicles", sub-title "Operation of Vehicles Upon Highways", providing that any vehicle transporting explosives shall carry a load not to exceed 5,000 pounds, defining what are considered explosives and making certain other provisions regarding transportation of explosives.

SECTION 1. Be it enacted by the General Assembly of Maryland That Section 264 of Article 66 1/2 of the Annotated Code of Maryland (1951 Edition), title "Motor Vehicles", sub-title "Operation of Vehicles Upon Highways", be and it is hereby repealed and re-enacted, with amendments, to read as follows:

264. (Vehicles Transporting Explosives.) (a) Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

(b) The word "explosives" as used in this sub-title shall include, but is not limited to, any solid or liquid chemical compounds or mechanical mixtures which act by explosive chemical reaction liberating heat and gas such that the resultant gaseous pressures are capable of producing destructive effect on contiguous objects or of destroying life or limb. They may contain mixtures of combustible but non-explosive material with an oxidizing agent, fulminating powders, organic nitrates, nitro substitution products or mixtures containing these.

EXPLANATION:

Italics indicate new matter added to existing law.
[Brackets] indicate matter stricken from existing law.

SENATE BILL NO. 236.

[a] (c) Said vehicle shall be marked or placarded on each side, the front and the rear with the word "EXPLOSIVES" in letters not less than 8 inches high and each stroke shall be not less than one inch (1") in width.

[b] (d) Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(e) No vehicle, semi-trailer, trailer or any combination thereof shall transport any explosive or explosives in any quantity in excess of five thousand (5,000) pounds.

(f) The limitation of sub-section (e) of this Act shall not apply:

(1) During any period of war as declared by the Congress of the United States.

(2) To the movement of explosives in aid of mining or excavating operations or in aid of the discovery or production of oil or gas when such explosives are moved between any point or points not regularly served by any means of transportation other than transportation by motor vehicle and the nearest practical common carrier loading or unloading point.

(3) During any period of grave national emergency provided a permit for each movement of explosives in excess of five thousand (5,000) pounds is issued by the governor or by any official designated by him, specifying the route or routes to be followed, the description of the vehicle to be used, the time of such movement, and any other precautions to be observed in such movement to protect the public safety.

(g) The driver of every motor vehicle used to transport any explosive or explosives shall at all times carry with him an inventory of the explosives so transported, which shall be subject at all times to inspection by any peace officer. Such inventory shall state plainly the weight in pounds of such explosives and the empty weight of the vehicle or combination of

vehicles used for such transportation. Any false statement in such inventory shall constitute a violation of this Act.

(h) It shall be the duty of peace officers to inspect and weigh or cause to be weighed vehicles carrying explosives, and to inspect the inventory carried by the driver, in order to enforce the provisions of this section.

[c] (i) The Department is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highways as it shall deem advisable for the protection of the public.

Violation of this section shall be deemed to be a misdemeanor and upon conviction shall be punishable by a fine of One ($1.00) Dollar to One Hundred ($100.00) Dollars, or to imprisonment not to exceed one year or by both fine and imprisonment.

SEC. 2. And be it further enacted, That this Act shall take effect June 1, 1953.

CERTIFIED to be a true and correct copy, in two pages of Senate Bill No. 236, as introduced into the General Assembly of Maryland on February 23, 1953.

/s/ Carl N. Everstine
Carl N. Everstine, Director
Dept. of Legislative Reference

Plaintiff's Exhibit 169

OFFICE OF THE SECRETARY OF DEFENSE
MILITARY TRAFFIC SERVICE
WASHINGTON 25, D. C.

18 February 1953

MEMORANDUM FOR THE RECORD:

A meeting was held at 1500 this date on the subject of restrictive state legislation in the transportation of explosives by motor carrier.

The following were present:

Mr. Roger Kent - General Counsel, ORD.
Rear Admiral Harold Houser - Legislative Liaison Officer, ORD.
Mr. Vore
Captain Nevins
Mr. Perrin

The following were decided upon as measures to be taken in opposing the restrictive legislation in the order enumerated:

1. Legislative Liaison would take all possible measures.

2. Failing in 1 above, and after notification of failure, MTS would advise Admiral Houser that it will send a representative (Mr. Perrin) to accompany a representative of Legislative Liaison to the hearing in the individual state, to testify in opposition.

3. Legislative Liaison would inform Armed Services Committees of Congress.

4. Military Departments would be used to represent DOD in hearings before State Committees.

5. Federal legislation would be sought

(a) DTA - ICC

In connection with 5 above, Admiral Houser's office is currently working on the preparation of a bill.

/s/ J.K.N.
J. K. Nevin, Jr.
Captain, USN
Deputy Director

Copy to:
Mr. Vore
Mr. Perrin

Plaintiff's Exhibit 170

Dear Joe:

I want to thank you for the assistance you gave us with respect to the draft of the letter which we proposed to send to the governors of the respective states. Your suggestions were timely and appropriate. We appreciated the assistance greatly.

I am enclosing a copy of the letter that was sent to each of the governors for your information.

Very truly yours,

/s/ Perrin

J. Frank Perrin
Commerce Counsel

Enclosure - 1

Mr. Joseph Keller, Esq.
Dow, Lohnes & Albertson
Munsey Building
Washington, D. C.

Prepared by J. F. Perrin/pbp

27 November, 1950

Plaintiff's Exhibit 171
Page One

Jan 15, 1951

MEMORANDUM FOR: THE UNDER SECRETARY OF THE NAVY

SUBJECT: Proposed Application of Riss & Co., Inc. for Temporary Authority to Transport Explosives To, From or Between Points and Places Generally in East [1/] Classification Territory

FINDING

Except for supporting the need for transportation of dangerous explosives [2/] by motor vehicle from Crane, Indiana to Earle, New Jersey covered by another application of Riss & Co., Inc. for permanent authority, the Department of Defense should not support the subject application since there appears to be no "immediate and urgent need xxx [for service] xxx within xxx [East Classification] Territory xxx."

SYNOPSIS OF PROCEEDING

Riss & Co., Inc. has certificated rights authorizing operation as a common carrier by motor vehicle of selected and general commodities over an extensive pattern of routes stretching from the Colorado common points and Amarillo, Texas on the west to the North Atlantic seaboard on the east. Riss & Co.'s operating rights generally west of a line from Chicago to St. Louis embrace all classes of explosives. Those east of this line include only those classified as relatively safe and are an adjunct to the transportation of general commodities. [3/] A further exception held by Riss & Co. is in connection with temporary transportation of all classes of explosives from Crane,

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1/ Generally, that territory lying east of the Mississippi River and north of the Ohio River and the line of the N & W from Kenova, West Virginia to Norfolk, Virginia.

2/ Dangerous explosives are those classified as dangerous and less dangerous in the Commission's "Regulations for Transportation of Explosives and Other Dangerous Articles by xxx Motor Vehicle (Highway) xxx," 15 F.R. 8261. There is an additional classification of those which are relatively safe.

3/ In Strickland Transportation Co., Inc. Extension - Dangerous Explosives, 49 I.C.C. 59 , the Commission, by Division 5, at page 601 said, "a carrier authorized to transport general commodities except 'dangerous explosive' lawfully can transport these explosives xxx classified 'relatively safe' but not those xxx classified 'dangerous' whether more dangerous or less dangerous."

Indiana to Earle, New Jersey. All classes of explosives were transported by Riss Co. over the lines east during the war under a temporary operating authority unlimited as to time. Since the war the Commission authorized Riss & Co. to continue operations pending the Commissions determination with respect to the carriers' applications for permanent authority. This application for permanent authority also included the right to transport general commodities to, from and between points and places in West [4/] Classification Territory.

The Commission in Riss & Company Extension of Operations - Explosives sustained the denial contained in the memorandum report by Division 5 on 19 April 1950 of the application for a certificate of public convenience and necessity. On 17 October 1950 a decision of the United States District Court for the Western District of Missiouri, Western Division, upheld the denial by the Interstate Commerce Commission of the application (in No. MC 200, Sub 34, Riss & Company, Inc.) for a certificate to transport explosives to, from and between points and places in East Classification Territory.

Despite this denial of the certificate Riss & Company will be able to serve the military to the same extent that they have in the past except for dangerous and less dangerous explosives between many points and places in East Classification Territory. This prohibition does not apply to relatively safe explosives. Furthermore, it does not affect the transportation of all classes of explosives from Crane, Indiana to Earle, New Jersey which is conducted under a temporary operating authority, on which the final determination has not been made by the Commission.

Riss & Co., Inc. urges that we support a new application for temporary authority in order to:

(a) assure the military services a continuity of transportation service for explosives; and

(b) avoid breaking up Riss & Company's so-called "military operation"; and

---

4/ Generally, that territory lying west of the Mississippi River.

(c) assure adequate motor transportation for the military services within the territories served by Riss & Co., Inc.

Riss & Co., Inc. operates into, out of, by, and near many military installations. For such commodities as they were authorized to transport they did perform considerable transportation for the military services. All classes of explosives were included in this transportation both intraterritorially in the territory west of, and east of the Mississippi River.

CONCLUSION

The pertinent provisions of the Act [5/] read as follows:

"To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier capable of meeting such need, the Commission may, in its discretion xxx grant temporary authority for such service xxx"

The Munitions Board Policy, as amended 30 October 1950 provides that:

"1. Participation by the Department of Defense xxx in proceedings xxx in which new or additional operating authorities are involved, will be undertaken only when:

xxx

b. The military department concerned determines that:

(1) There is no carrier authorized to render service required xxx; or

(2) The services of authorized carriers are inadequate to fulfill the actual needs xxx."

Item 1. b. (1) and (2) above merely restate and clarify existing law with respect to that part reading, "xxx no carrier capable of meeting such need, xxx." Carrier services other than those provided by Riss & Co. exist at all active and inactive installations including services competent to handle all classes of explosives. In view of this it would be difficult to support the

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5/ Interstate Commerce Act, as amended.

Riss application even though there was no need to consider the additional standard of "immediate and urgent need."

The consideration of "immediate and urgent need" is of course the real stumbling block to support of the application for temporary authority. These wants are not unique. They are used in the normal and usual sense, namely, an urgent and pressing matter to be disposed of at once. However, and in the absence of a catastrophe of considerable magnitude, or some other calamitous visitation, it would seem rather far-fetched to find an "immediate and urgent need" for transportation at multiple points of origin or with the entire "East" territory. Nevertheless, need for "spot" movements, if immediate and urgent, will be supported.

Despite the conclusions reached in this particular instance, Riss & Co., Inc. may still perform for the military services in Eastern Territory transportation of (a) general commodities which includes relatively safe explosives and (b) all classes of explosives from Crane, Indiana to Earle, New Jersey; and in Western Territory generally they may continue to perform transportation of general commodities including all classes of explosives.

In view of the facts, the existing law and the Munitions Board Policy, also in view of the further consideration that this matter is now before the Supreme Court the Military Traffic Service does not concur in support of the subject application.

There is attached for your information copy of a memorandum reciting Department of Navy policy on the use of commercial truck in the use of transportation of explosives dated 8 January 1951 to myself from Captain K. C. Johnson.

(stamped) SIGNED

E. G. Plowman
Director

Attachment

Prepared by:
JFPerrin/bpb
19 Jan. 1951

Plaintiff's Exhibit 172

OFFICE OF THE SECRETARY OF DEFENSE
MILITARY TRAFFIC SERVICE
WASHINGTON 25, D. C.

6 June 1951

MEMORANDUM FOR: MR. VORE

SUBJECT: Support by the Department of Defense of Application of Riss & Co., Inc. for Certificate of Public Convenience and Necessity to Transport Commodities Including Explosives To, From or Between Points and Places Generally in East Classification Territory

Because of the scope of the subject application, a series of meetings were held with the appropriate representatives of the military departments to find the quickest and the best method to obtain and assemble the necessary basic data. The canvassing of the field installations has already been commenced by the military departments.

The Department of the Navy has been assigned the task of monitoring this program and preparing the report, with their conclusions as to whether support can or cannot be given the subject application.

If it is concluded that support can be given to the subject application, in whole or in part, the Department of the Navy has also been delegated the responsibility of processing of the program to completion.

We have requested that the report of the canvass of the field installations be completed by 3 July 1951 in order that action can be taken before the hearing which has been set on this application for 16 July 1951.

/s/ Perrin
J. Frank Perrin

Operating Rights - Motor Carriers

Plaintiff's Exhibit 173

Jun 7, 1951

Dear Mr. Layne:

This will acknowledge receipt of and thank you for your letter of 17 May 1951 reciting the facts surrounding the application of Riss & Company, Inc., for a certificate of public convenience and necessity to operate as a common carrier by motor vehicle of certain commodities to, from and between many points and places in the United States.

I regret the delay in answering your letter. It has been occasioned, however, by the volume of work which this office is required to process.

The matter of support of the application of Riss & Company, Inc. is being processed with the military departments and we anticipate an early determination as to whether support can or cannot be given in whole or in part to the application under consideration.

Sincerely yours,

(stamped) SIGNED

Kenneth L. Vote
Director

Mr. A. Alvis Layne, Jr.
Posner, Barge, Fox & Arent
Ring Bldg., 1200 18th St., N. W.
Washington 6, D. C.

Prepared by:
JFPerrin/bpb
6 June 1951

Operating Rights - Motor Carriers

Plaintiff's Exhibit 175
Page One

OFFICE OF THE SECRETARY OF DEFENSE
MILITARY TRAFFIC SERVICE
WASHINGTON 25, D. C.

16 August, 1951

MEMORANDUM FOR: DIRECTOR, MILITARY TRAFFIC SERVICE

SUBJECT: Riss and Company

Yesterday afternoon Mr. Alvis Layne, attorney for Riss and Company, and Mr. Powell, an official of the company, called on this office and I talked to them in company with Mr. Mayo who is handling the case.

They wanted to know the extent to which the Department of Defense proposed to support the need for service at the hearing on their application for a certificate of public convenience and necessity covering certain existing temporary operations on the transportation of explosives and dangerous articles.

Mr. Mayo and myself had agreed prior to the meeting that we would not disclose yet the extent to which we were going to support a need for service since there are some 22 applicants to be heard at the same time as the Riss application. Incidentally, the hearing is set for 17 September in Chicago.

Mr. Mayo has decided to convey to the Commission the extent to which we propose to support the need for service so that the latter can limit the scope of the hearing.

In support of our position to not disclose at this time the scope of our service needs we pointed out that regardless of the merits of the case (that the 22 applicants were to some extent riding in on the coattails of Riss and Company) they - the applicants - were taxpayers and we had to treat them all alike. Moreover, that in the last analysis the Commission had the onus of determining which carrier should receive the certificate. It was further

pointed out that to allege a need for service which was not actual would amount to the practice of fraud on the Commission. In other words, as a government agency we had to keep faith with another government agency, and also treat all taxpayers in the same manner.

This is for your information.

/s/ Perrin
PERRIN

Operating Rights - Motor Carriers

Plaintiff's Exhibit 176

27 Sept. '51

MEMORANDUM FOR: DEPUTY DIRECTOR,
MILITARY TRAFFIC SERVICE

SUBJECT: Selection of Method of Inland Transportation in the Movement of Ammunition and Explosives; Department of Defense Policy Covering

I have reviewed this file and I would strongly recommend that we do not attempt in any policy statement or otherwise to stipulate what explosives and dangerous articles may move by truck and what may move by rail. Motor carriers are common carriers and have been so declared by Congress. Its wisdom in this matter it seems is not for us to challenge. If the Commission authorizes the transportation of explosives and dangerous articles by motor vehicle, I believe we would be rather presumptuous to attempt to segregate traffic as between motor carriers and rail carriers.

Moreover, to reduce such a finding to a policy statement that would undoubtedly get publicity, either directly or indirectly, could merely place coals of fire on our heads.

This appears to be another situation similar to the one tried some years back by the Munitions Board to determine what commodities are best suitable for air transportation. I believe this item is at present sleeping. In 1943 Congress had quite a hearing with respect to the transportation of explosives and dangerous articles in passenger train service. They knew it was unlawful, yet they did not have the intestinal fortitude to pass a law making it lawful to transport those commodities in passenger train service.

I believe the letter to Admiral Dauernschmidt should be replied to and the fact merely pointed out that both Congress and the Commission have sanctioned transportation of explosives and dangerous articles by motor vehicle. Until the elected representatives of the people and the Commission change their viewpoints we should not undertake to change their viewpoints for them.

PERRIN

Ammunition & Explos. Gen'l.

Plaintiff's Exhibit 177
Page One

4 October 1951

MEMORANDUM FOR: DIRECTOR

SUBJECT: Riss Case

As I told you yesterday afternoon, Mr. Pete Beardsley, an attorney from the American Trucking Association, met with Mr. Harris and myself this morning to discuss ATA's intervention in the above case.

I believe ATA's position will be in intervention that they are not opposing or supporting the application of any of the carriers seeking rights; that their only interest is to see that the real issue in the case, i. e. the need for certain transportation service by motor vehicle by highway for the military departments, is not obscured by another issue, i. e. the safety of transporting explosives by highway vs. rail.

Mr. Beardsley feels that the case may be broadened to include the latter issue. The latter issue, of course, was decided back in 1935 when Congress, in its wisdom, passed the Motor Carrier Act and gave common carriers by motor vehicle any rights to transport any property under the so-called "Grandfather Clause" or any rights to transport any property which they could prove under an application of public convenience and necessity. To attempt to introduce the issue of safety of transportation of explosives by highway vs. rail in this particular case would merely amount to a rehashing of an argument that has long ago been decided.

Despite this Mr. Beardsley feels that it may creep in and if it should he would like, within the limits of security, to be able to secure certain information from the military departments through the Military Traffic Service. I told him that undoubtedly we would be in a position to supply such information as he needed consistent, of course, with military requirements. I did tell him, however, that before he did act on it I would like to clear it with you.

As you will recall, we have on occasions talked about putting somebody from the Department on the stand who is qualified to discuss the sensitivity of these various commodities. Of course, to do this would surely open the door for the issue mentioned above, which is extraneous to this proceeding. I believe we should try and keep the proceeding within bounds and as sure as we put a departmental expert on the stand this extraneous issue would be wide open for discussion.

PERRIN

JFP/ned

Plaintiff's Exhibit 179

21 February 1952

MEMORANDUM FOR: DIRECTOR, MILITARY TRAFFIC SERVICE

SUBJECT: Attached Proposed Petition of Intervention on Behalf of the United States Secretary of Commerce

Without criticizing this entire document, and it is subject to severe criticism in practically every paragraph, I think it is only important to call your attention to two points. One is embodied in item 5 and the other is in item 6. C.

In item 5 they speak of the national transportation policy. Without reciting all of it, the objective of the national transportation policy is as follows:

> "All to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service and the national defense."

Everything preceding that objective is merely a means to achieving the objective, although apparently the Secretary of Commerce is unaware of this.

In item 6. C. the Secretary recommends the granting of temporary certificates and permits, except possibly where overwhelming proof of permanent public need is made. First, temporary certificates can only be granted for a period of 180 days. If what the Secretary requests were granted it would mean that the Department of Defense would be jumping from one carrier to another every 180 days which would indeed increase the hazard beyond that inherent in the use of permanently certificated motor carriers. Any program established to assure safe handling of explosives would be doomed to failure from the beginning because no carrier would want to enter into any extensive safety program if it were only permitted to transport explosives for 180 days. The word "overwhelming" overwhelms me because there is no such adjective used in the Act with respect to proof of public convenience and necessity.

PERRIN

Attachment

Ammo. & Expl., Gen'l.

Plaintiff's Exhibit 180

OFFICE OF THE SECRETARY OF DEFENSE
MILITARY TRAFFIC SERVICE
WASHINGTON 25, D. C.

20 March 1953

MEMORANDUM FOR: THE DIRECTOR
MILITARY TRAFFIC SERVICE

Mr. Alvis Layne called on me on 6 March, in his capacity as counsel to Riss and Company, and inquired if the Departments had considered the following factors which would surely arise if the Interstate Commerce Commission put its leasing order into effect:

(1) The difficulties which would ensue where one carrier interchanges with another carrier and the latter carrier does not pay the division of revenue.

(2) The difficulties which would ensue by the interchange of new equipment of a large carrier with short and weak lines.

(3) Would such short and weak lines have grounds for showing inadequacy of service if a large carrier confined its operations only to a single line haul, and vice versa?

(4) Would the Departments object to Riss and Company alternating equipment with Union Freightways on the ballistic sample run between the Ordnance Depot in Nebraska and Jefferson Proving Ground?

These are matters which apparently the Departments have not considered in connection with the leasing problem. It seems that they should reach some definitive action in connection with these problems.

/s/ Perrin
PERRIN

Operating Rights - Motor Carriers

Plaintiff's Exhibit 181

11 May 1953

MEMORANDUM FOR: MR. JOHN G. ADAMS,
DEPUTY GENERAL COUNSEL

REAR ADMIRAL HAROLD A. HOUSER,
DIRECTOR, LEGISLATIVE LIAISON

SUBJECT: Restrictive State Weight Legislation

There has been introduced in the Assembly of the state of Wisconsin by Mr. Borall, at the request of R. Cowan, a bill No. 811, A limiting the transportation over the public highways of the state of Wisconsin in or by a motor vehicle, trailer, semitrailer or any combination thereof, any explosive or explosives in any quantity in excess of 5, 000 pounds. There are exceptions for any period of war as declared by the Congress of the United States, and for mining or excavating operations or in aid of the discovery or production of oil or gas, and also by permit from the governor during any period of grave national emergency.

This bill was introduced on 27 April 1953.

It would be appreciated if you would handle this matter under the same procedure that we have in the past, namely through the Senators of the respective states first.

PERRIN

cc: Mr. W. J. Burns,
Munitions Carriers Conference
Mr. Frank Sherlock

Prepared by:
JFPerrin/eb
11 May 1953

Motor Carrier - State Legislation

Plaintiff's Exhibit 182
Page One

DEPARTMENT OF DEFENSE
GENERAL COUNSEL
WASHINGTON 25, D. C.

28 October 1953

MEMORANDUM FOR: THE DIRECTOR OF TRANSPORTATION

SUBJECT: Proposal of the Interstate Commerce Commission to submit reports of investigations of violations of safety regulations of the Commission, made by field representatives of that Commission, to the Department of Defense for information or such other action as the military departments deem necessary and appropriate.

At the meeting this morning, attended by representatives of the Office of Director of Transportation, the military departments, and the Interstate Commerce Commission, I called attention to the pitfalls in the subject proposal. Tersely stated, the Interstate Commerce Commission is hoping that by this proposal the Department of Defense will pull its chestnuts out of the fire.

These reports are investigative reports which the Commission may use in either a revocation proceeding before that Commission or in a civil or criminal prosecution proceeding in a court against a carrier. In any of these proceedings the Bureau of Safety of the Interstate Commerce Commission would have to prove, in the Commission proceeding and the civil proceeding in a court, by preponderance of the evidence that the carrier was guilty, and in a criminal proceeding they would have to prove beyond a reasonable doubt that the carrier was guilty. Yet the Commission wants us to take these investigative reports and use them as the basis for disciplinary action against the carriers. It would appear to me that such a proposal should not be accepted by the Department of Defense because of the unfortunate circumstances that could arise by virtue of any of the military departments taking disciplinary action against a carrier on the basis of such investigative reports.

I discussed this matter with Mr. Hiederlehner and he agrees that the Department of Defense should not be put in the position of policing an

industry, which by statute it is the obligation of the Commission to police.

It would be my recommendation that we not send any letter to the Interstate Commerce Commission urging the submission of such investigative reports.

/s/ Perrin

PERRIN

cc: Mr. Leonard Hiederlehner
Assistant General Counsel

Plaintiff's Exhibit 183
Page one

To: Dick Strouse

cc: Muriel Fox, Bob Davis

May 13, 1952

From: Chan Hadlock

At belated last, this is confirmation of my understanding of our conversations concerning the desire of the account to utilize existing radio and television vehicles to portray truckers as evil, sinister wrong-doers.

Actually, the proposed program fell into three catagories. Not necessarily in order of importance -- 1) An effort by me to create and sell free-lance network radio and/or television scripts to existing dramatic programs with the trucking theme as basic plot, picturing the trucker as a law-breaker etc. As we discussed, invariably to conform with network requirements the "bad" truckers may have to be compensated for by "good" truckers, but the poison will still be there and the damage done. 2) We will make all possible efforts to enlist the aid of regular and free-lance writers to utilize the trucker as a heavy for shows they are writing or will be writing. Special emphasis will be placed on trying for a soap opera contact and such utilization. 3) We will merchandise as much as possible, some basic plot lines with truckers as the heavies, for use by any existing show, and/or regular or free-lance writer. Actually the final two points do overlap in some respects.

In connection with the first item, I have approached Leonard Blair, National Program Manager of ABC Radio, and he is considering a truck plot line for the ABC Radio dramatic series "Top Guy." I should hear from him within a couple of weeks.

In connection with the second item, I have approached two writers, one a very top TV scripter (Suspense, Danger etc.), and he has agreed to use some of our material as plot bases. However, he brought up an important TV problem, which I know we will hear again, and which we briefly discussed. This is briefly, a truck script invariably calls for some action outside. Since this is not practical live, it obviously calls for film, and this simple requirement might cause such scripts as we originate to be rejected. Therefore, as

I understand it, there will be necessary means to offer film footage of considerable length which a TV producer could integrate into a cops-'n-truckers chase. This may be the property of the railroads, could be rented from stock footage houses, or shot to specification. But we can offer footage as an inducement and part of our cooperation. As you indicated the offer can appear to come from the Babbitt Alarm people.

And the last, a tougher nut to crack, I have nothing to report but may have some action on this in the future. Basically at the moment it's vital to get some plots worked out of the materials you have, and will give me.

As a sidebar on the project we did suggest that we look into the matter of securing the TV and/or radio adaptation rights for any novels (They Drive By Night, etc.), that picture truckers in the desired light.

We could then offer these gratis to some free-lance adapters, pitched for shows that require that the writers furnish cleared vehicles. This will undoubtedly take some time.

Check me on these things, and see if I'm correct in my understanding, and let me know what you think.

. . . . CH . . . .

Plaintiff's Exhibit 183

[Filed February 2, 1960]

IT IS HEREBY STIPULATED AND AGREED, by and among counsel for plaintiff and counsel for defendants herein, that if Channing M. Hadlock were called as a witness in this action he would testify as follows:

1. He began his employment by Carl Byoir & Associates, Inc. (Byoir) on March 24, 1952 on a three month trial basis. During his employment by Byoir he was the most junior staff member of the Radio and Television Department. He was discharged by Byoir on May 29, 1952 on the grounds that he had not met the Byoir qualifications.

2. The document bearing plaintiff's authentication No. 881 dated May 15, 1952 was prepared by him on that date and sent to Mr. Richard Strouse, another employee of Byoir.

3. The document was prepared by him on his own initiative following a short discussion with Mr. Strouse, who was a staff member assigned to the ERPC account. Other than this discussion, he had not discussed the objectives of this account with anyone else and had not read any memorandum or other matter in writing which described the objectives of the account.

4. The language, "evil, sinister wrongdoers" was his own characterization of matters discussed with him by Mr. Strouse. During the two months and four days of his employment by Byoir he did not accomplish any of the things referred to in the memorandum.

s/ A. Alvis Layne

Attorney for Plaintiff

5649 1 118

s/ Powell Pierpoint

Attorney for all Defendants
for this purpose